



## **DEPARTMENT OF AGRICULTURE**

### **Food and Nutrition Service**

#### **7 CFR Part 246**

**[FNS-2022-0015]**

**RIN 0584-AE85**

### **Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program**

**AGENCY:** Food and Nutrition Service (FNS), Department of Agriculture (USDA).

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Nutrition Service, USDA (the Department), proposes to remove barriers to online ordering and internet-based transactions in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) through this rulemaking. This is expected to improve the WIC shopping experience while increasing equity and access to nutritious foods for WIC participants, thus positively impacting nutrition security. The proposed rule also complements the Program's near-complete transition to electronic benefit transfer (EBT) by streamlining and modernizing certain WIC food delivery regulations to support current technology and future innovation, and by introducing measures intended to meet the needs of a modern, data-driven program that uses these technologies for food delivery.

**DATES:** Written comments must be received on or before [insert date 90 days after date of publication in the Federal Register] to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of [insert date 90 days after date of publication in the Federal Register].
- Regular U.S. Mail: WIC Vendor and Technology Branch, Policy Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031-0885.
- Overnight, courier, or hand delivery: Patricia Bailey, WIC Vendor and Technology Branch, Policy Division, Food and Nutrition Service, 1320 Braddock Place, 3<sup>rd</sup> Floor, Alexandria, Virginia 22314.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Patricia Bailey, Chief, WIC Vendor and Technology Branch, Policy Division, Supplemental Nutrition and Safety Programs, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314, (703) 305-2435 or [patricia.bailey@usda.gov](mailto:patricia.bailey@usda.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview**

The retail grocery industry has changed over the past several years and online shopping has become an increasingly common method to shop for groceries. Advances in technology related to online shopping and the development of new payment types have greatly influenced the way Americans shop and pay for food. To ensure that participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

have equal access to available shopping options and can transact their WIC benefits as the retail marketplace innovates and evolves, the Department proposes to remove barriers to innovation and to modernize certain WIC food delivery regulations. To accompany these proposed changes, the Department proposes additional measures to meet the needs of a modern, data-driven program that uses current technologies for food delivery.

Specifically, this rulemaking proposes to:

- 1) Remove barriers to online ordering and internet-based transactions in WIC, including a current prohibition of the authorization of internet-based vendors. The proposed revisions would provide State agencies the flexibility to offer online shopping to participants in a way that maintains program integrity. The revisions support oversight measures and policies appropriate for current and future technologies and security requirements and also support program integrity as the retail marketplace innovates.
- 2) Streamline and modernize WIC food delivery. The proposed revisions are intended to reflect the Program's near-complete transition to electronic benefit transfer (EBT), support current technology and future innovation, and expand opportunities for the retail grocery industry to innovate in ways that benefit WIC participants. The proposed revisions would also allow State agencies to develop and test new types of food instruments (e.g., mobile payments) and allow for the remote issuance of WIC benefits.
- 3) Meet the needs of a modern, data-driven program that uses current technologies for food delivery by updating reporting requirements and introducing new staff positions intended to support the operational capacity of WIC State agencies.

In the development of this proposed rule, the Department prioritized equity and access for WIC participants. However, the Department recognizes that the proposed rule would impact WIC State agencies, including Indian Tribal Organizations (ITOs), as well as

local agencies, clinics, and vendors in ways that could affect participants' access to benefits. To mitigate any potential civil rights-related impacts of the proposed rule, FNS intends to provide State agencies with technical assistance to implement and communicate program changes in alternative languages and formats that are accessible to all participants and vendors, and to enable small vendors, especially small, minority- and Tribal-owned stores, to engage with online shopping.

The Department's overarching goal is to advance nutrition security by improving the WIC shopping experience and ensuring that WIC participants have equitable access to nutritious foods. At the same time, the Department recognizes the importance of maintaining security and oversight measures at the Federal and State agency levels. This rule represents a major transition for the WIC Program and is expected to increase participant satisfaction and, ultimately, participation and retention while preserving program integrity.

## **II. Background**

This part provides key terms used throughout this preamble, an overview of the WIC Program, challenges of the current WIC shopping experience, and a summary of information used to develop this proposed rule. Proposed regulatory changes are discussed in detail in part III.

### *A. Introduction of Key Terms*

For the purposes of this proposed rule preamble, the Department will use the following terms:

- “WIC shopper” means a person shopping using WIC benefits (i.e., a WIC participant, proxy, or a parent or caretaker of an infant or child participant).
- “Online shopping” means the general use of an online, internet-based ordering system, platform, or site. It can encompass online ordering with or without

internet-based transactions (i.e., the transaction can occur via the internet, in store, curbside, or at the point of delivery).

- “Online ordering” means the process a customer (including a WIC shopper) uses to select food items for purchase via an internet-based ordering system, platform, or site.
- “Transaction” means the process by which a WIC shopper exchanges their WIC benefits for supplemental foods.
- “Internet-based transaction” means a transaction where the WIC payment is completed through the payment section of the online ordering system, platform, or site. This terminology is being used in lieu of “online transaction” to avoid confusion with transactions that occur using online EBT technology.
- “Redemption” means the process in which a vendor submits records of electronic benefits for redemption and the State agency (or its financial agent) makes payment to the vendor.

#### *B. Overview of the WIC Program*

The WIC Program is administered by 89 WIC State agencies, including the 50 States, 33 Indian Tribal Organizations, the District of Columbia, and 5 U.S. Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands). WIC serves to safeguard the health of low-income pregnant, breastfeeding, and non-breastfeeding postpartum individuals, and infants and children up to age five who are found to be at nutritional risk. In 2019, WIC participants included

nearly 43 percent of all infants in the United States,<sup>1</sup> and in fiscal year (FY) 2020, WIC served an average of 6.25 million participants per month.<sup>2</sup>

The Department provides Federal grants to WIC State agencies to provide supplemental foods, health care referrals, and nutrition education, including breastfeeding promotion and support, to WIC participants. WIC participants typically access supplemental foods through a retail food delivery system. In such systems, a WIC shopper goes to a WIC-authorized vendor (i.e., a retail store authorized by the State agency), selects foods available in their benefit balance, and uses an EBT card to purchase the items. In FY 2020, there were approximately 40,000 WIC-authorized vendors nationwide, and nearly 93 percent of WIC participants received WIC benefits via EBT.

### *C. Challenges of the Current WIC Shopping Experience*

Currently, WIC regulations at 7 CFR 246.12(r)(4) require participants to pick up food instruments (e.g., paper food instruments, cash-value vouchers (CVVs), or EBT cards) in person. While WIC State agencies are required to develop plans per § 246.4(a)(23) to “minimize the time participants and applicants must spend away from work” and issue food instruments and CVVs “through means other than direct participant pick-up,” participants report that the time and money spent traveling to a WIC clinic to pick up food instrument(s) remains a barrier to participation. The proposed rule would encourage State agencies to remotely issue electronic benefits and mail EBT cards whenever possible, potentially reducing the number of clinic visits that WIC participants are required to make.

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<sup>1</sup> U.S. Department of Agriculture, Food and Nutrition Service, “National- and State-Level Estimates of WIC Eligibility and WIC Program Reach in 2019: Final Report, Volume I,” pp. 65, by Kelsey Farson Gray et al. Project Officer Grant Lovellette, Alexandria, VA: February 2022. Available online at: <https://fns-prod.azureedge.net/sites/default/files/resource-files/WICEligibles2019-Volume1.pdf>.

<sup>2</sup> U.S. Department of Agriculture Food and Nutrition Service, “WIC Data Tables,” 2021. Available online at: <https://www.fns.usda.gov/pd/wic-program>.

Additionally, WIC regulations generally only allow WIC State agencies to authorize vendors with a single, fixed location (§ 246.2, *Vendor*) and require the WIC shopper to sign food instruments or enter a Personal Identification Number (PIN) in the presence of a cashier (§ 246.12(h)(3)(vi)). These two provisions require that the WIC transaction occurs in the physical space of a brick-and-mortar store.

These in-person requirements present challenges to families, particularly those with limited mobility or access to transportation, those who live in remote or rural communities, and/or those with special dietary needs who require supplemental food substitutions that may not be readily available at the closest WIC-authorized grocery store. WIC households, which are less likely to use a personal vehicle for grocery shopping than higher-income non-WIC households,<sup>3</sup> are expected to benefit from additional flexibilities around both benefit issuance and pickup and the shopping experience.

#### *D. Key Information Used in the Development of this Rule*

To develop this proposed rule, FNS reviewed technical materials developed by a wide variety of WIC stakeholders, including:

- The Gretchen Swanson Center for Nutrition (GSCN), through a grant from FNS, developed a comprehensive plan for implementing online shopping in WIC. This plan, called the Blueprint for WIC Online Ordering Projects (the “Blueprint”), was published on June 15, 2021.<sup>4</sup> GSCN utilized an input and consensus building process (a Delphi process) to gather information from WIC stakeholders on policy, technical, and programmatic factors important to the implementation of

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<sup>3</sup> U.S. Department of Agriculture, Economic Research Service, “Where Do Americans Usually Shop for Food and How Do They Travel to Get There? Initial Findings from the National Household Food Acquisition and Purchase Survey,” EIB-138, pp. 10, by Michele Ver Ploeg et al., March 2015. Available online at: <https://www.ers.usda.gov/publications/pub-details/?pubid=79791>.

<sup>4</sup> Gretchen Swanson Center for Nutrition, “Blueprint for WIC Online Ordering Projects,” June 2021. Available online at: <https://static1.squarespace.com/static/58a4dda16a49633eac5e02a1/t/60c8ea51296905287a9420eb/1623779922155/Blueprint+for+WIC+Online+Ordering.pdf>.

online shopping in WIC. The Blueprint provides implementation guidance for all WIC State agencies and stakeholders testing online shopping in WIC.

- The Task Force on Supplemental Foods Delivery (the “Task Force”), authorized by the Consolidated Appropriations Act for Fiscal Year 2021 (Pub. L. 116-260), consisted of WIC stakeholders convened to independently “study measures to streamline the redemption of supplemental foods benefits that promote convenience, safety, and equitable access to supplemental foods, including infant formula.” The Task Force consisted of 18 member organizations from multiple sectors to ensure a diverse range of input from: WIC providers, retailers, manufacturers, EBT processing companies, advocacy organizations, WIC participants, and additional stakeholders. The Task Force submitted its recommendation report to FNS on September 30, 2021.<sup>5</sup>

FNS reviewed the Task Force’s recommendation report and the Blueprint’s summary of regulatory barriers, and this proposed rule addresses the online shopping recommendations from these documents that are within the appropriate scope of this rulemaking. While in some instances FNS has taken a different approach than recommended by the Task Force’s recommendation report and/or Blueprint, the proposed revisions reflect the overall goals of these stakeholder efforts while adhering to the general purpose and scope of the WIC Program.

This proposed rule was also informed by State agency feedback, including feedback on waivers of WIC regulatory requirements issued to State agencies as part of the Department’s COVID-19 pandemic response (under time-limited waiver authority granted by the Families First Coronavirus Response Act, Pub. L. 116-127). Feedback on waivers related to the WIC shopping experience (e.g., remote benefit issuance,

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<sup>5</sup> U.S. Department of Agriculture, Food and Nutrition Service, “Task Force on Supplemental Food Delivery in the WIC Program - Recommendations Report,” September 2021. Available online at: <https://www.fns.usda.gov/wic/food-delivery-task-force-recommendations-report>.



transaction without presence of cashier, and removing the on-site requirement from monitoring actions) highlighted opportunities for modernization within the Program. For example, almost all WIC State agencies reported that the “remote benefit issuance waivers made WIC safer, more accessible, and more convenient for participants’ schedules during the pandemic.”<sup>6</sup>

FNS has also heard from WIC State agencies that identifying and recruiting top talent are integral to the success of the WIC Program as it evolves to better serve participants through modern technologies. The improved data collection and strengthened staffing requirements proposed in this rule would ensure that the WIC Program has the resources needed to run a modern, data-driven program while maintaining program integrity and security measures.

Additionally, this proposed rule was informed by WIC participant feedback, which indicates strong interest in expanded WIC shopping options. In a National WIC Association survey that collected responses from 26,642 WIC participants from 12 WIC State agencies, about two-thirds of respondents reported that they would like to be able to order their supplemental foods online or by phone, and about one-third even indicated that they would be willing to pay an additional out-of-pocket fee for home delivery.<sup>7</sup>

This proposed rule also incorporates lessons learned from the Supplemental Nutrition Assistance Program’s (SNAP) efforts to support online shopping for SNAP participants, including the importance of building program integrity measures into all levels of oversight. Learning from SNAP’s experiences will allow the two programs to move

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<sup>6</sup> U.S. Department of Agriculture, Food and Nutrition Service, “Changes in WIC Operations During the COVID-19 Pandemic: A First Look at the Impact of Federal Waivers,” pg. 1, December 2021. Available online at: <https://www.fns.usda.gov/wic/operations-impact-federal-waivers-during-covid-19-pandemic>.

<sup>7</sup> Lorrene Ritchie et al., “Multi-State WIC Participant Satisfaction Survey: Learning from Program Adaptations During COVID,” pg. 14, National WIC Association: December 2021. Available online at: <https://s3.amazonaws.com/aws.upl/nwica.org/nwamulti-state-wic-participant-satisfaction-surveyreportfinal.pdf>.

forward consistently, to the extent possible, and ensure that cross-program integrity efforts continue without interruption.

### **III. Discussion of Proposed Revisions**

#### **1. Remove Barriers to Online Ordering and Internet-Based Transactions**

The proposed revisions would remove regulatory barriers to online shopping and allow the Program to adapt with the marketplace, in order to ensure that WIC participants have access to a broader array of shopping options and are not left behind as the industry innovates. The proposed revisions would ensure that WIC State agencies have the flexibility necessary to oversee new types of vendors and to maintain program integrity and security. FNS would support WIC State agencies through technical assistance to make online shopping platforms and communications about program changes accessible in appropriate languages and alternative formats for all participants and vendors.

The following is a discussion of each proposed provision.

##### **a. Allow Vendors and WIC Shoppers to Complete Internet-Based Transactions [§§ 246.12(h)(3)(v), (vi), and (xxxii), (v)(1)(iv), and (bb)(2)].**

The Department proposes to allow vendors and WIC shoppers to complete internet-based transactions by removing the requirement that WIC shoppers must sign food instruments, or enter a PIN, in the presence of a cashier (§ 246.12(h)(3)(vi)). This flexibility would allow WIC State agencies to modernize along with the retail grocery industry.

The Department proposes the following changes to:

##### **(i) Clarify which vendor agreement provisions apply only to paper food instruments.**

The Department proposes changing “printed” to “paper” in § 246.12(h)(3)(vi) to indicate that the remainder of the provision applies specifically to paper food instruments. The Department also proposes to consolidate the requirement from § 246.12(h)(3)(v) to enter the purchase price of the authorized supplemental foods on paper food instruments and

CVVs before they are signed into a single provision at § 246.12(h)(3)(vi). In addition to this change, the Department proposes modernizing the remaining text at § 246.12(h)(3)(v), to ensure that the requirements around the calculation of the purchase price continue to be applicable in EBT, and that a WIC shopper is made aware of the total purchase price of a transaction before the transaction is completed, as a program integrity measure.

(ii) Remove the requirement that WIC shoppers must sign in the presence of a cashier.

The Department proposes further revising the signature requirement for paper food instruments and CVVs at § 246.12(h)(3)(vi) by removing the requirement that the WIC shopper's signature is completed in the presence of a cashier. WIC shoppers would still be required to sign the paper food instrument or CVV to complete the transaction.

Separate transaction authentication policies, described below, include program security requirements for EBT transactions.

(iii) Remove the requirement to use a PIN in lieu of a signature and create new provisions to allow WIC State agencies to explore and identify options to authenticate EBT transactions.

The Department proposes to remove the portion of § 246.12(h)(3)(vi) that allows use of a PIN in lieu of a signature and create a new provision at § 246.12(h)(3)(xxxii), which would require vendors to authenticate EBT transactions in accordance with State agency policies. The Department also proposes a new provision at § 246.12(bb)(2) to require that State agencies' transaction authentication policies are in compliance with standards established by the Department. Together, these provisions will provide State agencies the flexibility to develop transaction authentication policies that are appropriate and secure for the specific technologies they choose to adopt while ensuring a level of consistency across State agencies.

Taken together, the creation of § 246.12(h)(3)(xxxii) and (bb)(2) along with the revisions to § 246.12(h)(3)(vi) would provide WIC State agencies the flexibility to allow internet-based transactions using modern and appropriate authentication technologies, and allow the Department the flexibility to develop the necessary technical and security requirements in technical documents that can be updated as the industry innovates. The Department proposes similar edits to § 246.12(v)(1)(iv), which would ensure that transactions at authorized farmers and farmers' markets also occur in accordance with the procedures established by the State agency and developed according to standards established by the Department.

b. Create New Types of Vendors [§ 246.2].

The Department proposes creating separate definitions for different types of vendors at § 246.2. The Department proposes new definitions for “brick-and-mortar vendors,” “internet vendors,” and “mobile vendors.” Creating new types of vendors would provide State agencies with flexibility to authorize the types of vendors needed to support program modernization while ensuring participant access to supplemental foods throughout their jurisdictions. To ensure continued and effective State agency management and oversight, all authorized vendors, no matter the type, would be subject to all regulations governing vendors.

The Department proposes the following changes to:

(i) Create a new definition for “brick-and-mortar vendor.”

The Department proposes a definition for “brick-and-mortar vendor,” which would allow this type of vendor to be defined separately and distinctly from other vendor types (e.g., internet or mobile vendors). Historically, vendors authorized under a retail food delivery system were required to be brick-and-mortar vendors. The Department proposes to clarify that “all transactions that take place at a brick-and-mortar vendor will be assigned to that

vendor” to reinforce that the location of the transaction (e.g., at a single, physical, fixed location; via an internet-based transaction; or at mobile vendor) is used to classify vendors by vendor type, not the location where the order was made or fulfilled.

(ii) Create a new definition for “internet vendor.”

The Department proposes a new definition of “internet vendor” to distinguish vendors operating through an online platform with internet-based transactions from brick-and-mortar vendors. The proposed definition for “internet vendor” is based, in part, on SNAP’s working definition of “internet retailer,” and would be implemented consistently with SNAP’s definition, to the extent possible, to ensure that cross-program integrity efforts may continue without interruption.

(iii) Create a new definition for “mobile vendor.”

The Department proposes to create a separate definition of “mobile vendor” to distinguish mobile vendors with transactions that take place at a truck, bus, pushcart, or other mobile vehicle. This is different from vendors operating a brick-and-mortar location with transactions at the physical, fixed location.

(iv) Update the definition of “above-50-percent vendors.”

The Department proposes to revise this definition to ensure that any type of authorized vendor (e.g., brick-and-mortar, internet, or mobile) could also be classified as an above-50-percent vendor if it meets the conditions of the definition.

c. Modernize the Definition of “Vendor” [§§ 246.2 & 246.4(a)(14)(xv)].

The Department proposes to modernize the current definition of “vendor” to allow State agencies the flexibility to authorize more types of vendors (e.g., “internet vendors,” and “mobile vendors”).

The Department proposes the following changes to:

(i) Remove language from the definition of “vendor” that currently only allows WIC State agencies to authorize vendors with a “single, fixed location” (i.e., brick-and-mortar vendors).

The Department proposes to remove this requirement to allow for the creation of distinct vendor type definitions, including “brick-and-mortar,” “internet,” and “mobile” vendors, as described in more detail above. The proposed revision would allow State agencies the flexibility to authorize vendors that would provide supplemental foods through means other than a single, fixed location.

(ii) Simplify the definition of “vendor” by replacing current regulatory language delineating different business structures that a vendor may have (i.e., a sole proprietorship, partnership, cooperative association, corporation, or other business entity) with the term “business entity.” This simplified language would clarify that any type of business entity may be authorized as long as it meets the State agency’s selection criteria. This would remove the burden of proving or determining business structure from vendor applicants and WIC State agencies during the vendor authorization process.

(iii) Remove a clause in the definition of “vendor” requiring a special needs justification for mobile vendors.

The Department proposes removing the requirement for a State agency to justify the authorization of mobile vendors in its State Plan. This would allow State agencies to authorize mobile vendors more easily and would remove the burden of providing justification to FNS for such authorizations. This change is in alignment with the proposed removal of the related provision at § 246.4(a)(14)(xv).

(iv) Clarify that all vendors must be authorized separately.

The Department proposes to clarify that all vendors, regardless of type, must be authorized by the State agency separately. To ensure that an authorization in SNAP is related to only one WIC authorization per State agency, vendors with a unique SNAP

authorization number must be authorized as unique vendors by any WIC State agency that authorizes them. This allows for coordination of vendor/retailer activities between the two programs, supports the ability for the programs to move forward consistently, to the extent possible, and ensures that cross-program integrity efforts continue without interruption (e.g., reciprocal disqualifications, etc.).

For vendors with store locations that are not SNAP authorized, the Department proposes that each single, separate location is considered a unique vendor from all other store locations and, therefore, must be authorized separately. This is consistent with how the WIC Program currently authorizes vendors.

The proposed revision also clarifies that a vendor providing supplemental foods through any means other than a single, fixed location must be authorized separately from brick-and-mortar vendors, even if operated by the same business entity. This is consistent with SNAP's current retailer authorization practices.

The Task Force encouraged FNS to explore "the option for a national authorization process, with State opt-ins, that could streamline multistate authorization for virtual vendor platforms." However, as section (c)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)(2)(A)) obligates the Secretary to "make cash grants to State agencies for the purpose of administering the program," the Department does not have authority to authorize vendors in the WIC Program. This activity, along with all other vendor management functions, is delegated to WIC State agencies. The Department's proposed provisions aim to streamline and modernize WIC food delivery wherever possible, while remaining within the scope and purpose of the Program.

d. Allow Vendors to Return Benefits to a Participant's Benefit Balance [§§

246.12(h)(3)(ii) introductory text, (h)(3)(ii)(A) and (C), (x)(2)(iii), (x)(4) introductory text, and (x)(4)(i)].

The Department proposes revisions to allow electronic benefits to be returned to the participant's benefit balance when an item requested through the online ordering process is not fulfilled as ordered, while reinforcing that cash refunds continue to be prohibited. The proposed revisions would also provide changes to support the electronic benefit return process, including providing additional time for participants to use their returned electronic benefits to purchase supplemental foods. This is intended to ensure that WIC shoppers who attempt to order items online close to the last date of use for those benefits do not lose them if the vendor is unable to fulfill the order. These changes would support the participant's ability to fully transact their electronic benefits for supplemental foods (i.e., to allow the use of the benefit balance at a later date or at another vendor) and ensure that the State agency is only charged for foods received by the participant. These flexibilities are expected to be particularly important to support the purchase of fruits and vegetables with cash-value benefits (CVBs), since those items are often priced by weight. The differences proposed in this rule between food instruments, electronic benefits, CVVs, and CVBs are discussed in more detail with the Department's proposal to permit the remote issuance of electronic benefits to a participant's benefit balance (section 2.a.).

The Department proposes the following changes to:

(i) Clarify that cash refunds are still prohibited and update exchange policy to accommodate recalls.

The Department proposes adding "cash" to the sentence, "[n]o substitutions, cash, credit, *cash refunds*, or exchanges" in § 246.12(h)(3)(ii) to ensure that cash refunds would continue to be prohibited. The proposed provision would clarify that the vendor must not



provide cash in exchange for electronic benefits, nor a cash refund for supplemental foods purchased with benefits.

The Department proposes additional changes to § 246.12(h)(3)(ii) introductory text and (3)(ii)(A), and to introduce § 246.12(h)(3)(ii)(C). First, the Department proposes to clarify when language refers to paper food instruments and CVVs versus electronic benefits throughout the provision. Second, the Department proposes adding “type” and “physical form” to the list of characteristics to ensure that exchanges are limited to identical authorized supplemental food items. Lastly, the Department proposes to introduce language at § 246.12(h)(3)(ii)(C) to ensure that all customers, including WIC shoppers, are treated the same in the event that an authorized supplemental food is recalled. The Department proposes introducing this vendor agreement provision to ensure that WIC-authorized vendors include WIC shoppers in their recall exchange policies, including policies related to replacements (which may include, but are not limited to, the same product, a substitute product, store credit, or a cash refund). Under this new provision, WIC shoppers would be able to exchange recalled product like all other consumers.

(ii) Allow for the return and use of electronic benefits when an online order cannot be fulfilled.

The Department proposes to add the provisions at § 246.12(x)(4) to allow for the return and use of electronic benefits when an online order cannot be fulfilled. This proposed provision would support participants’ ability to fully transact their benefits for supplemental foods, and to ensure that the State agency is only charged for foods received by the participant.

(iii) Allow for the return and use of electronic benefits not successfully transacted before the last date of use.

To address issues that may arise as transactions approach the last date of use, the Department proposes § 246.12(x)(4)(i) to allow the return of electronic benefits, and to provide time for subsequent transactions to occur. This provision would provide the participant with no less than 7 calendar days to transact the returned benefits when electronic benefits are returned to a participant's benefit balance. This would promote full benefit redemption for participants, while establishing an expectation for the length of time electronic benefits would remain available after the original last date of use.

This proposed creation of these provisions would necessitate a revision to § 246.12(x)(2)(iii) to reference the proposed provision that addresses the return of benefits after the last date of use § 246.12(x)(4)(i). The Department expects that WIC State agencies will require additional time to develop and refine the technological solutions needed to meet these provisions and is proposing an extended implementation timeframe of eighteen months from publication of the final rule.

e. Allow State Agencies to Develop Virtual Methods of Oversight [ §§ 246.2 and 246.12(g)(5) and (j)(6)(ii)(B)].

The Department proposes revising current WIC regulations to allow State agencies to develop virtual methods of oversight to ensure that their monitoring and investigative methods are appropriate for the types of vendors authorized (e.g., internet vendors) and current environmental conditions (e.g., during a pandemic). WIC State agencies are responsible for all vendor management and oversight, and the Department proposes to provide the flexibility necessary to use technology to streamline these efforts and develop new methods of oversight for new types of vendors.

The Department proposes the following changes to:

(i) Update the definitions of “routine monitoring” and “compliance buy.”

The Department proposes removing the requirement that routine monitoring visits and compliance buys occur on site from the definition of each term in § 246.2. The purposes of monitoring visits and investigations would remain unchanged, as well as the minimum number of vendors that must be monitored and investigated annually, as outlined at § 246.12(j)(2) and (4).

Removing this requirement would also require the Department to clarify the documentation requirements outlined in § 246.12(j)(6)(ii)(B). The proposed revision adds the phrase “if applicable” to the requirement to document the cashier involved in a compliance buy to accommodate situations in which no cashier is present (e.g., an internet-based transaction). All other documentation requirements at § 246.12(j)(6) would remain applicable regardless of the location of the transaction or type of vendor.

(ii) Introduce virtual visits as an allowable type of preauthorization visit.

The Department proposes to add virtual visits to the types of allowable preauthorization visits established at § 246.12(g)(5) to provide WIC State agencies the flexibility to streamline such visits and to develop procedures that are appropriate for the types of vendors authorized under their jurisdiction.

f. Permit WIC Shoppers to Pay for Fees Associated with Online Shopping [ §§ 246.12(h)(3)(xxxiii) and (v)(1)(ix) and 246.14(b)(1)(i) and (c)(4)].

The Department proposes to add a new provision at § 246.12(h)(3)(xxxiii) to clarify that WIC-authorized vendors must not charge the State agency for fees associated with online ordering (e.g., delivery, service, convenience, bag fees). If such fees are assessed to non-WIC customers using the same services, WIC participants must be allowed to pay them using another tender type. A similar provision is proposed for farmers and farmers’ markets at § 246.12(v)(1)(ix).

This proposed change would work in combination with the revisions proposed at § 246.14(b)(1)(i) and (c)(4), both of which clarify that State agencies operating home food

delivery or direct distribution systems may continue to pay for the cost of transporting food under these food delivery systems. Costs in home food delivery and direct distribution are different from fees associated with online shopping in a retail food delivery system, which would only occur if the WIC shopper chooses online shopping. The Department is specifically requesting comment on whether State agencies should have the option to pay for fees associated with online shopping in a retail food delivery system with either (1) non-Federal funding at State agency discretion and/or (2) Federal funding in situations where it is deemed necessary to meet special needs (e.g., participant access or other needs as identified by the State agency). The Department requests input from stakeholders that includes a discussion of how this option would impact equitable access to online shopping for WIC participants, the rationale for State agencies to pay these fees (e.g., to ensure participant access to online shopping in certain areas within the State agency's jurisdiction, to transition from a direct distribution or home food delivery system), possible models for paying for such fees (including whether there should be any limits on the amount of delivery fees paid by the WIC State agency), and any considerations necessary to pay for fees for different vendor types (e.g., above-50-percent, internet, brick-and-mortar).

## 2. Streamline and Modernize WIC Food Delivery

The proposed revisions in this section are intended to reflect the Program's near-complete transition to EBT, support current technology and future innovation, and expand opportunities for the retail grocery industry to innovate in ways that benefit WIC participants. The proposed revisions would also allow State agencies to develop and test new types of food instruments (e.g., mobile payments) and allow for the remote issuance of WIC benefits. As the Program completes the transition to EBT and innovates further, FNS will continue to support State agencies in their efforts to use current technologies to provide adequate participant access to supplemental foods.

The following is a discussion of each proposed provision.

a. Permit the Remote Issuance of Electronic Benefits to a Participant's Benefit Balance [§§ 246.4(a)(23), 246.7(f)(2)(iv), and 246.12(r)(2), (4), and (5)].

The Department proposes to remove barriers by revising § 246.12(r)(4) to specifically apply to paper food instruments and CVVs, and by creating § 246.12(r)(5) for the issuance of EBT cards and electronic benefits. This proposed provision would encourage WIC State agencies to allow for the remote issuance of electronic benefits (i.e., the loading of electronic benefits to an EBT card, or other access device or technology, without requiring the participant to travel to a clinic) and for the mailing of EBT cards. The provision would require that State agencies do so in a way that ensures that participants are offered nutrition education in accordance with § 246.11(a)(2) and that their EBT cards and electronic benefits are issued within the processing timeframe requirements at § 246.7(f)(2)(iv), without jeopardizing the integrity of program services or program accountability.

Section (f)(6)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(6)(B)) states that a State agency may provide for delivery of vouchers to participants not scheduled for nutrition education and breastfeeding counseling or recertification. Since this legislation requires WIC participants to pick up paper food instruments when scheduled for an in-person nutrition education or subsequent certification appointment, that requirement would remain in regulations, as revised, at § 246.12(r)(4).

This proposed revision to § 246.12(r)(4) and the proposed creation of § 246.12(r)(5) would necessitate revisions to § 246.7(f)(2)(iv), to update processing timeframe requirements to support remote issuance of electronic benefits, and to §§ 246.12(r)(2) and 246.4(a)(23) for clarity.

To ensure clarity related to how these provisions apply to food instruments, CVVs, and electronic benefits, the Department proposes to create a new definition of “electronic benefits” in § 246.2. This new definition clarifies that electronic benefits are separate and distinct from food instruments. Electronic benefits are the WIC benefits for supplemental foods prescribed to a participant and contained within the participant’s benefit balance. This definition complements the electronic benefit requirements established at § 246.12(x).

Similarly, the Department proposes to update the definition of cash-value voucher to remove the clause, “Cash-value voucher is also known as cash-value benefit, or CVB, in an EBT environment,” and create an independent definition of CVB as a type of electronic benefit that is a fixed-dollar amount used to obtain authorized fruits and vegetables. Additionally, the Department proposes to remove “electronic benefit transfer (EBT) card” as a type of CVV to ensure that the modern definitions of food instrument, electronic benefits, and cash-value benefit work together. The proposed modernization of the definition of food instrument is described in more detail below.

Lastly, the Department proposes modifying the State Plan requirements described under § 246.4(a)(23) to focus this requirement on how the State agency will improve access for all participants and prospective applicants (with an additional focus on those who are employed and/or reside in rural areas), including measures to improve access through the remote issuance of food instruments, CVVs, and/or electronic benefits. The Department also proposes edits to ensure that this provision remains consistent with § 246.12(r)(4) and (5).

b. Expand the Definition of Food Instrument [§ 246.2].

The Department proposes adding “other electronic benefit access device or technology” to the definition of “food instrument” to allow WIC State agencies to explore and adopt new technologies beyond the EBT card (e.g., mobile payment) while ensuring that key

program integrity requirements apply to these new technologies. In addition, the proposed revision would better match the proposed definition of “EBT” which includes “other electronic benefit access device or technology.”

c. Update the Uniform Food Delivery Systems Provision to Support State Agency Innovation [§§ 246.2 and 246.12(b)].

Current WIC regulations require each food delivery system to be procedurally uniform throughout the State agency’s jurisdiction, and that when used, food instruments must be uniform within each type of system.

The Department proposes the following changes to:

(i) Allow State agencies to develop and test new WIC food instrument types.

The Department proposes introducing conditions for when non-uniform food instruments may be used within a single food delivery system, such as when necessary to meet special needs described in the State agency’s State Plan per § 246.4(a)(14)(i), or when transitioning from one type of food instrument to another. This proposed flexibility would provide State agencies the ability to address needs specific to their jurisdictions, and to test and smoothly transition to new food instrument types, as needed.

(ii) Clarify uniform food delivery systems and system combinations.

The Department proposes clarifying in § 246.12(b) that State agencies may use a combination of retail, home food delivery, and direct distribution systems, and that this combination of systems together must ensure adequate participant access to supplemental foods.

Legislation (42 U.S.C. 1786 (h)(12)(A)(i)) defines EBT as a “food delivery system that provides benefits using a card or other access device approved by the Secretary that permits electronic access to program benefits,” although it is more precisely described as a benefit delivery method. Therefore, the Department proposes to update the definition of

“Electronic Benefit Transfer” to clarify that it is a benefit delivery method, and to introduce “other electronic benefit access device or technology” to allow WIC State agencies to explore and adopt new technologies beyond the EBT card.

Further, the Department proposes to clarify in § 246.12(b) that there are three types of food delivery systems (retail, home food delivery, and direct distribution), and that these three must be procedurally uniform within a State agency’s jurisdiction. When used, food instruments must be uniform within each type of system, except when the use of non-uniform food instruments (e.g., introducing a mobile app for certain participants while others use EBT cards) is necessary to meet the special needs described and approved in the State agency’s State Plan per § 246.4(a)(14)(i), or when transitioning from one type of food instrument to another. These changes are intended to provide clarity and flexibility to State agencies as they work to ensure participant access to supplemental foods.

d. Streamline Food Delivery Operations by Recognizing that EBT Data are a Sufficient Replacement for Routine Shelf Price Collection [§ 246.12(g)(4) introductory text, (g)(4)(ii)(B), and (g)(9)].

The Department proposes to revise the requirement at § 246.12(g)(4)(ii)(B) so that State agencies with access to EBT data do not have to collect shelf prices from vendors every six months or seek an exemption from FNS. With EBT, State agencies receive current data about vendors’ prices at least daily and no longer need to either formally collect these prices through administratively burdensome surveys or take the time to request an exemption from FNS. State agencies without access to electronic benefit redemption data must continue to collect vendor shelf prices at least every six months or seek an exemption from FNS. These changes are expected to reduce burden on authorized vendors and State agencies without negatively impacting program integrity or vendor cost containment practices.



This proposed change would necessitate similar updates to § 246.12(g)(4) and (9), to allow State agencies to use other types of appropriate price data to meet requirements of vendor authorization and cost containment provisions.

e. Extend Vendor Application and Agreement Periods [§ 246.12(g)(8) and (h)(1)(i)].

The Department proposes to increase the maximum length of vendor agreements (§ 246.12(h)(1)(i)) and the minimum frequency that State agencies must accept and process applications (§ 246.12(g)(8)) from three to five years. The proposed change would reduce the administrative burden on vendors and State agencies without sacrificing program integrity, as time periods for vendor monitoring, training, and investigations would be unchanged.

f. Allow State Agencies Using a Non-Retail, Home Food Delivery System to Ship Supplemental Foods to a Location Designated by Participants [§§ 246.2 and 246.12(m)].

The Department proposes revising the definition of “home food delivery contractor” at § 246.2 to allow supplemental foods to be delivered to “a location designated by the participant or State agency” instead of limiting the delivery to the participant’s home.

This revision would increase flexibility for both WIC State agencies and participants to determine the most appropriate delivery location and would provide more equitable access to participants in remote areas without mail service at all homes. The revision to this provision would necessitate a similar change to § 246.12(m). The State agency must continue to ensure the accountable delivery of authorized supplemental foods to participants per § 246.12(m)(2).

Additionally, to be consistent with revisions to the definition of “vendor,” the Department proposes replacing the specific examples of business entities from the definition of “home food delivery contractor” with “business entity.”

### 3. Meet the Needs of a Modern, Data-Driven Program

The Department proposes updating reporting requirements to align with data reporting via the Food Delivery Portal (FDP), which replaced The Integrity Profile (TIP) in FY 2022, and expanding State agency staffing requirements to support modernizing and streamlining WIC food delivery and customer service to participants.

The Department has heard from State agencies that identifying and recruiting top talent are key to the success of the WIC Program. This is especially important as WIC continues to evolve to better serve participants through the use of current and future technologies, including by providing electronic benefits and implementing online ordering. The ability to hire staff who can focus on food delivery and customer service would help WIC State agencies to ensure that program modernization efforts support meaningful access to program information for all participants.

The following is a discussion of each proposed provision.

a. Update Reporting Requirements for Federal Oversight [§ 246.12(j)(5)].

The Department proposes to revise § 246.12(j)(5) to reflect the types of data that have been collected for Federal oversight of State agency food delivery management since 2005, and to align with the transition in reporting systems from TIP to FDP. The TIP system, which WIC State agencies have used since 2005, was upgraded to use current technology and renamed the Food Delivery Portal in FY 2022. Since 2005, there have been changes to requirements, policies, technology, and guidance that the TIP system could not support. FDP uses a more robust data collection system to align with current security protocols and compliance guidance, support data storage and web components, ensure cost effectiveness, allow for more data-driven decision making through increased data analytic functionality, enhance FNS reporting capabilities, reduce grantee burden through automated calculations and consolidated reporting, and add data validation features to reduce reporting errors.

Additionally, current WIC regulations require the State agency to send “a summary of the results of its vendor monitoring containing information stipulated by FNS” to FNS once a year. The Department proposes updating this reporting requirement to ensure that WIC State agencies report to FDP on all the entities that provide supplemental foods to WIC participants: vendors, home food delivery and direct distribution contractors, farmers, and farmers’ markets. The modifications would also remove language that requires a report to be sent on each fiscal year by February 1 of the following fiscal year to FNS. This would allow the Department to set data submission timelines as appropriate for the modern system and reporting needs, which may be as frequent as quarterly but not less than annually. The reporting requirements, including data fields and submission timelines, will be provided to WIC State agencies with advance notification via policy guidance.

Reporting timelines for FDP have already been set via WIC Policy Memorandum #2021-9: *Transition from The Integrity Profile to the Food Delivery Portal* through reporting year FY 2024.

b. Create Two New WIC State Agency Staff Positions to Reflect the Staffing Needs of a Modern, Innovative Program [§ 246.3(e)(5) and (6)].

Current WIC regulations at § 246.3(e)(3) outline the requirements for State agencies to employ a State WIC Nutrition Coordinator with certain qualifications, and to employ a number of Program Specialists, based on caseload. The Department proposes introducing staffing standards for two new State agency staff positions, the WIC Food Delivery and WIC Customer Service coordinators, at § 246.3(e)(5) and (6), respectively. The Department proposes that these positions be staffed with one full-time or equivalent staff when the monthly participation is more than 7,000, or a half-time or equivalent staff when the monthly participation exceeds 500 (and, in the case of the WIC Food Delivery Coordinator, if the State agency manages its own vendor cost containment system). At these thresholds, sixteen of the smallest State agencies (i.e., those with under 500

monthly participants on average) would not be impacted. The proposed revisions also include the ability for State agencies to request an exception to these qualifications to allow for existing personnel or for special circumstances.

Given the importance of WIC food delivery, the Program's near-complete transition to EBT, and the special skills necessary to effectively operate and monitor a retail food delivery system in accordance with Federal vendor cost containment requirements, the Department proposes to develop stronger standards for the position of the WIC Food Delivery Coordinator.

The Department expects that adding this position would ensure that WIC State agencies have the staff in place to make the data-driven decisions necessary for a modern, efficient WIC Program that uses current technologies for food delivery.

Additionally, the Department proposes adding standards to create a WIC Customer Service Coordinator to support WIC State agencies as they work to hire staff who are well-equipped to support program improvements related to participant-facing activities, particularly those that involve emergent technologies and future innovations, potentially including those related to modernized WIC food delivery. WIC State agencies currently use participant-facing technologies to provide WIC services in a customer-centered manner. State agencies have indicated, though, that they do not always have the ability to hire staff with the necessary technical and procurement-related skills to procure, operate, and update these technologies. The Department expects that establishing a WIC Customer Service Coordinator position will help WIC State agencies as they work to recruit and retain staff that can manage current technology projects and continue WIC modernization work through the assessment and implementation of future technologies. These proposed provisions would formalize both the staffing requirement and the expected education and experience levels required for the two positions. To ensure that equity is considered in the development of these standards, the standards allow certain

work experience to be treated the same as certain higher educational requirements. The Department expects that these provisions will help WIC State agencies to recruit and retain staff with the skills necessary to manage and modernize their food delivery systems, and to adopt new technologies to improve the participant experience. The WIC Food Delivery and WIC Customer Service coordinators would also play an important role in ensuring that program modernization efforts and improvements to participant-facing technologies are completed in a manner that ensures accessible and meaningful access to program information for all participants.

The Department is specifically requesting comments on whether the staffing standards proposed at § 246.3(e)(5) and (6) would support State agencies' search for qualified personnel. The Department asks stakeholders to include a discussion of the State agency's ability to recruit and fill these positions as described (considering both the recruitment and hiring of staff with the proposed credentials), an assessment of any challenges and costs associated with the adoption of these provisions, necessary timeline to operationalize such requirements, and any recommendations for changes to the standards along with related rationale.

#### 4. Request for Public Comment on Key Topic Areas

The Department encourages stakeholders to provide comment on potential civil rights impacts of the proposed rule. Further, in addition to proposed regulatory changes described previously, the Department seeks comment on the below topic for consideration in this or a future rule. The Department will review and revise all proposed provisions, as needed, prior to submission of a final rule, considering both public comments and relevant publications by regulatory agencies.

##### a. Exceptions to Minimum Stocking Requirements.

The Department seeks comment on whether there is a need to authorize vendors that sell a specific subset of supplemental foods (e.g., dairies, bakeries, produce sellers) but would

not meet the minimum variety and quantity of supplemental foods, as required by WIC regulations (i.e., two different fruits, two different vegetables, and at least one whole grain cereal per § 246.12(g)(3)(i)). The Department requests input from stakeholders that includes a discussion of:

- Whether the authorization of these specialty store types would improve WIC participant access to supplemental foods, with EBT shopping patterns and habits in mind. If so, please describe how this would improve access, equity, and/or nutrition security for participants.
- If there are any special needs or access issues that would necessitate the authorization of these store types. If so, please describe the need and how this would improve access, equity, and/or nutrition security for participants.
- An assessment of the impact on vendor oversight and monitoring, including any changes that would be needed to ensure effective oversight and program integrity.
- Any concerns around including stores that only provide certain types of foods including those relating to State agency capacity to oversee the stores.

#### **IV. Implementation**

Because the majority of the revisions proposed are introducing opportunities for increased flexibility for WIC State agencies, the Department proposes that the proposed rule would take effect 30 days after publication of the final rule, except for the following listed provisions where State agencies would have 18 months from publication of the final rule to implement: § 246.12(x)(4) introductory text and (x)(4)(i), the provisions that propose to allow for the return and use of benefits when an online order could not be fulfilled, and § 246.3(e)(5) and (6), which would create two new WIC State agency staff positions. For § 246.12(x)(4) introductory text and (x)(4)(i), the 18 months would provide WIC State agencies the time to develop and refine the technological solutions needed to meet these provisions. For § 246.3(e)(5) and (6), the 18 months would provide WIC State

agencies the necessary time to prepare for any significant changes in State agency-level hiring structures and the State agency's specific staffing requirements. The Department seeks comments from State agencies on the type and scope of the administrative burden that may be associated with implementing the provisions in this proposed rule in this manner.

## **Procedural Matters**

### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### **Regulatory Impact Analysis Summary**

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. The complete RIA follows this proposed rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

### **Need for Action**

To ensure that WIC participants have equal access to available shopping options, with the expansion of online shopping in the retail grocery industry and the development of new

payment types, the Department proposes to remove barriers to online shopping and to modernize certain food delivery regulations in the WIC Program through this rulemaking. The proposed measures would complement the Program's near-complete transition to EBT and aim to meet the needs of a modern, data-driven program that uses current technologies for food delivery. These changes are expected to improve nutrition security among WIC participants by increasing equity and access to available shopping options.

### **Costs**

The Department estimates that the provisions under this proposed rule would collectively result in \$404 million in costs and Federal transfers over 5 years from FY 2024 through FY 2028 (Table 1). This estimate includes increases in Federal Government WIC spending, increased net costs to WIC State agencies, and a savings for WIC retail vendors.

The Department estimates that allowing WIC online shopping will increase Federal WIC food spending, in the form of transfers, by a total of \$392 million over 5 years. This is driven by an understanding that shoppers typically pay higher prices for online groceries and an expectation that online shopping would moderately increase WIC benefit redemption by making the WIC shopping experience more convenient for some participants.

The Department estimates that the proposed rule would also result in around \$30 million in net WIC State agency costs from FY 2024 to FY 2028. State agency costs include nearly \$27 million in total 5-year expenses required to update State agency systems to enable online transaction of WIC electronic benefits and \$55 million in total 5-year costs for increased staffing expenses due to the proposed changes to State agency staffing requirements. State agency costs would be partially offset by a large reduction in State agency reporting burden and recordkeeping burden, which is estimated to result in a



savings of \$52 million over 5 years and is largely attributable to the removal of shelf price collection requirements for EBT State agencies and the extension of vendor agreement and application periods. These State agency costs are considered allowable expenses for State agencies under their annually awarded Nutrition Services and Administration (NSA) grants. In general, the Department believes that State agencies would be able to absorb the costs associated with implementing the provisions under this proposed rule with current NSA funds.

**Table 1: Summary of Estimable Impacts on Transfers and Costs, FY 2024-2028**

	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
<b>Federal Transfers</b>						
<i>Impact of online shopping on Federal WIC food spending</i>	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	<b>\$ 392.1</b>
<b>State Agency Costs</b>						
<i>Systems development and maintenance for online shopping</i>	\$ 1.1	\$ 7.5	\$ 6.0	\$ 7.1	\$ 5.1	<b>\$ 26.9</b>
<i>Changes to reporting and recordkeeping burden</i>	-\$ 9.7	-\$ 10.0	-\$ 10.3	-\$ 10.6	-\$ 10.9	<b>-\$ 51.5</b>
<i>New State agency staff positions</i>	\$ 5.9	\$ 11.9	\$ 11.9	\$ 12.3	\$ 12.7	<b>\$ 54.7</b>
<b>WIC Vendor Costs</b>						
<i>Changes to reporting burden</i>	-\$ 3.6	-\$ 3.6	-\$ 3.7	-\$ 3.8	-\$ 3.9	<b>-\$ 18.4</b>
<b>Total Estimated Impact</b>	<b>-\$ 0.6</b>	<b>\$ 49.5</b>	<b>\$ 83.0</b>	<b>\$ 127.0</b>	<b>\$ 145.0</b>	<b>\$ 403.8</b>

Finally, the removal of shelf price collection requirements and the extension of vendor application and agreement periods are also expected to significantly reduce burden on WIC vendors. The Department estimates that the reductions in vendor reporting burden under the proposed rule would save WIC vendors \$18 million over 5 years.

## Benefits

The provisions under this proposed rule aim to modernize the ways that WIC participants can receive and transact their electronic benefits, creating opportunities to improve equity and accessibility in the Program as a result. An estimated 14 percent of the U.S. population lives in low-income census tracts with limited access to food stores<sup>8</sup> and 21 percent of WIC participants report using a means of transportation other than a personal car to travel to a vendor to use their WIC benefits.<sup>9</sup> Once at the vendor, participants also report challenges shopping for WIC foods. Recent USDA survey data indicate that finding the right WIC-approved products in stores, WIC-approved products being out of stock, and feeling embarrassed shopping for WIC foods are some of the most cited challenges among WIC participants who report difficulties shopping for WIC supplemental foods.<sup>10</sup> Online shopping may alleviate some of these issues for WIC participants and has the potential to provide benefits during supply chain disruptions. Enabling online shopping in WIC under this proposed rule is expected to reduce barriers to WIC Program services, ensure that WIC participants have an equitable shopping experience as the retail marketplace innovates, and increase participant purchases of supplemental foods. These regulatory changes would ensure that WIC participants have the ability to transact benefits online as an increasing share of U.S. consumers prefer to shop for groceries online. The proposed rule would further make WIC more convenient and accessible by encouraging State agencies to remotely issue electronic benefits and

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<sup>8</sup> U.S. Department of Agriculture, Economic Research Service, “State-Level Estimates of Low Income and Low Access Populations,” last updated September 30, 2019. Available online at: <https://www.ers.usda.gov/data-products/food-access-research-atlas/state-level-estimates-of-low-income-and-low-access-populations/>.

<sup>9</sup> U.S. Department of Agriculture, Food and Nutrition Service, “Brief Report #6: WIC Participant Satisfaction and Shopping Experience,” *Third National Survey of WIC Participants*, by Magness, A., et al., prepared by Capital Consulting Corporation and 2M Research Services, contract No. AG-3198-K-15-0077, Project Officer Karen Castellanos-Brown, Alexandria, VA: December 2021. Available online at: <https://www.fns.usda.gov/wic/third-national-survey-wic-participants>.

<sup>10</sup> Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>

mail EBT cards whenever possible, potentially reducing the number of clinic visits that WIC participants are required to make. The proposed rule also includes provisions that would streamline and modernize WIC food delivery by promoting innovation and ensuring that State agencies have enough qualified staff meet the needs of a modern, data-driven program. These provisions provide necessary measures to ensure that State agencies can deliver a more efficient and effective program for WIC participants.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities.

The provisions of this proposed rule would primarily affect WIC State agencies and WIC-authorized vendors. The staffing standards proposed at § 246.3(e)(5) and (6) would not apply to smaller State agencies, which have fewer resources. Otherwise, the proposed provisions would apply to all State agencies administering the WIC Program, regardless of size, and would largely be implemented at State agency option. The Department does not expect the proposed rule to have a significant impact on small State agencies.

Large retailers may be able to implement WIC online shopping more readily than other store types. However, the Department does not expect the proposed rule to have a lasting or significant negative impact on smaller WIC vendors as WIC sales represent a relatively small share of these stores' revenue. The Department's most recent available estimates of WIC redemptions by vendor size found that in fiscal year 2012, 76 percent of WIC retail redemptions occurred at larger stores (super stores, supermarkets, or large grocery stores), 10 percent occurred at smaller stores (small grocery stores, medium grocery stores, or convenience stores), 9 percent occurred at WIC-only and above-50-

percent stores, and 5 percent occurred at other stores (other retail stores, combination grocery/other stores, commissaries, or unknown store types).<sup>11</sup>

WIC sales make up a relatively small fraction of the revenue for smaller stores. Among convenience stores, for example, WIC sales only made up about 0.12 percent of non-fuel sales in 2012.<sup>12</sup> Therefore, the Department expects any revenue that convenience stores and other small vendors (such as small and medium grocery stores) may lose to online shopping at large WIC vendors to be relatively minor. The Department will provide technical assistance to State agencies when necessary to help small vendors engage with online shopping in the WIC Program.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

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<sup>11</sup> U.S. Department of Agriculture, Economic Research Service, “Where Do WIC Participants Redeem Their Food Benefits? An Analysis of WIC Food Dollar Redemption Patterns by Store Type,” EIB-152, by L. Tiehen, and E. Frazão: April 2016. Available online at: <https://www.ers.usda.gov/publications/pub-details/?pubid=44076>.

<sup>12</sup> Statista, “Sales of the convenience store industry in the United States from 2011 to 2020, by format,” January 2022. Available online at: <https://www.statista.com/statistics/308767/sales-of-the-us-convenience-store-industry-by-format/>.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of \$146 million or more in any one year. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

This Special Supplemental Nutrition Program for Women, Infants, and Children is listed in the Catalog of Federal Domestic Assistance under Number 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this proposed rule on State and local governments and has determined that this proposed rule does not have federalism implications. Therefore, under section 6(b) of the Executive order, a federalism summary is not required.

#### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **DATES** section of the final rule. Prior to any

judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### **Civil Rights Impact Analysis (CRIA)**

FNS has reviewed the proposed rule, in accordance with the Department Regulation 4300-004 “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the proposed rule might have on participants on the basis of race, sex, national origin, disability, or age. The requirements outlined in the proposed rule aim to remove barriers to online ordering and internet-based transactions, streamline and modernize WIC food delivery, and meet the needs of a modern, data-driven program that uses current technologies for food delivery. The proposed changes would impact WIC State agencies, including ITOs, WIC local agencies and clinics, and WIC vendors in ways that are expected to increase equity and access for WIC participants while enhancing the overall shopping experience.

In particular, the proposed rule would allow State agencies, including ITOs, to authorize new types of vendors and explore modern payment technologies and authentication methods. To comply with revised regulations and implement the proposed changes, staff at State agencies, local agencies, and WIC clinics would need to update operations and communicate these changes to participants. The rule would increase the number of WIC-authorized vendors by allowing different types of vendors (e.g., internet and mobile vendors) to participate in WIC, and eliminate the requirement for vendors to collect shelf-price data, thereby expanding participant shopping options. WIC participants would further benefit from fewer in-person requirements.

To mitigate potential impacts on program access for Limited English Proficiency populations and persons with disabilities, FNS will provide State agencies with technical assistance aimed at ensuring that online shopping platforms and communications about program changes are available in appropriate languages and in alternative formats for

persons with disabilities. FNS will also support State agencies as they work to engage small vendors in online shopping in the WIC Program. After reviewing the potential impacts, FNS does not believe the proposed rule would result in civil rights impacts on protected groups of WIC participants and applicants. However, the FNS Civil Rights Division will propose further outreach and mitigation strategies to alleviate any unforeseen impacts, if deemed necessary.

### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On November 30, 2021, FNS held a consultation with Tribal leaders and representatives on key issues related to the proposed rule. Tribal leaders were generally supportive of online ordering for WIC, which may increase access to food benefits for those with limited access to a physical store. Tribal leaders provided substantive feedback that was taken into consideration during the development of this proposed rule, including the importance of continuing to support brick-and-mortar vendors and small, Tribal-owned stores, and concern for the barriers that fees related to online ordering could pose to participants who want to use WIC online shopping options. FNS will explore additional opportunities for engagement as needed.

Once the proposed rule is published in the Federal Register, FNS will encourage stakeholders representing Indian Tribal Organizations to provide input on whether the proposed rule poses any adverse Tribal implications. If a Tribe requests additional consultation in the future, FNS will work with the Office of Tribal Relations to ensure

meaningful consultation is provided. FNS is unaware of any current Tribal laws that could be in conflict with this proposed rule.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This proposed rule impacts existing information collection requirements that are contained in OMB Control Number 0584-0043 Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping (expiration date December 31, 2023) which are subject to review and approval by OMB in accordance with the Paperwork Reduction Act of 1995.

Additionally, this proposed rule impacts existing reporting requirements that are approved under OMB Control Number 0584-0401 Food Delivery Portal (FDP) Data Collection (expiration date December 31, 2024), which are subject to review and approval by OMB in accordance with the Paperwork Reduction Act of 1995. Therefore, FNS is submitting for public comment the changes in the information collection burdens in OMB Control Numbers 0584-0043 and 0584-0401 that would result from adoption of the proposals in the rule.

Comments on the information collection for this proposed rule must be received by [Insert date 60 days after date of publication in the Federal Register].

Comments may be sent to: Patricia Bailey, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 3<sup>rd</sup> Floor, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to



<https://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information shall have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

a. Revisions to OMB Control Number 0584-0043

*Title:* Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden.

*OMB Number:* 0584-0043

*Expiration Date:* 12/31/2023

*Type of Request:* Revision of a currently approved collection.

*Abstract:* This is a revision of existing information collection requirements in the information collection under OMB Control Number 0584-0043 that are affected by this proposed rulemaking. Under this proposed rule, the Department proposes to remove regulatory barriers to online ordering and internet-based transactions in the WIC Program, streamline and modernize WIC food delivery, and meet the needs of a modern, data-driven program that uses current technologies for food delivery. This proposed rule impacts the burden associated with reporting requirements for State agencies, individuals

and households, and vendors, as well as the burden associated with recordkeeping requirements for State agencies. This proposed rule may also result in additional financial costs to WIC participants and State agencies.

(i) Burden Revisions Related to Internet Vendor Authorization, Monitoring and Oversight, and Training

The proposed rule would allow State agencies to authorize internet vendors, in addition to brick-and-mortar vendors and mobile vendors. Using the new definitions proposed, all vendors authorized under current WIC regulations would be classified as brick-and-mortar vendors with the exception of one mobile vendor. FNS estimates that 800 internet vendors in 80 State agencies with online EBT systems will be authorized initially following the rulemaking (due to technological constraints, offline EBT systems would not be able to support online transactions), increasing the total number of WIC-authorized vendors from 41,164 in the previous information collection submission to 41,964 vendors.

WIC regulations at § 246.12(g)(5) require that State agencies visit a vendor prior to their initial authorization in the Program. During an on-site preauthorization visit, State agency staff spend approximately 40 minutes verifying information provided by the vendor applicant and 20 minutes traveling to and from the vendor.<sup>13</sup> FNS is seeking approval for the requirement for on-site initial preauthorization visits and its associated burden through a separate revision to OMB Control Number 0584-0043. While the proposed rule would allow initial preauthorization visits of internet vendors to take place virtually, therefore not requiring travel time for State agency staff, the initial authorization of 800

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<sup>13</sup> The estimate of State agency travel time to visit a vendor is based on the amount of time WIC participants reported traveling to the store where WIC foods are purchased. U.S. Department of Agriculture, Food and Nutrition Service, “Appendix G. Program Experiences Survey Tables.” *Third National Survey of WIC Participants*, Alexandria, VA: 2021, Table 4h. Available online at: <https://www.fns.usda.gov/wic/third-national-survey-wic-participants>.

internet vendors would add 536.00 reporting burden hours for both State agencies and vendors.

The Department is proposing to increase the maximum length of vendor agreements and the minimum frequency that State agencies must accept and process applications from three to five years. FNS estimates that currently, State agencies spend approximately 45 minutes reviewing, processing, and approving vendor applications and agreements from one-third of the WIC-authorized vendors per year, for a total of 10,188.09 hours.<sup>14</sup>

Proposed changes to the definition of “vendor” would remove the requirement that State agencies determine a vendor applicant’s business structure, decreasing the amount of time it takes a State agency to review a vendor application by 5 minutes, from 45 to 40 minutes. This change, along with extending vendor agreement periods from three to five years and adding internet vendors, would result in a net decrease of State agencies’ reporting burden of 4,592.89 hours due to the proposed rule, resulting in a total 5,595.20 hours.

Additionally, the proposed increase to the length of vendor agreement periods and the addition of internet vendors would overall result in fewer vendors submitting vendor agreements and applications for review each year (one-fifth of vendors rather than one-third), decreasing vendors’ associated reporting burden by 5,191.32 hours, from 13,584.12 to 8,392.80 hours. These changes would also affect the existing State agency burden for maintaining records of vendor applications and agreements, decreasing this burden on net by 5,191.32 hours, from 13,584.12 to 8,392.80 hours. The number of respondents and frequency of responses for the State agency recordkeeping burden associated with vendor applications and agreements have also been adjusted to correct for clerical errors in this information collection. Under current regulations, the number of

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<sup>14</sup> FNS is seeking approval for the State agency requirement to review and process vendor agreements and its associated burden through a separate revision to OMB Control Number 0584-0043.

respondents is 89.00, rather than 13,584.12 State agencies, and the frequency of responses is 152.63 rather than 1 response per year. These clerical corrections do not affect the existing State agency recordkeeping burden as the underlying math is unchanged. As noted, the longer vendor agreement periods proposed in this rule would decrease the number of vendor agreements that each State agency collects and records each year from 152.63 to 94.30, resulting in the 5,191.32 hour decrease in the associated State agency recordkeeping burden.

Although the proposed rule would not change procedures for vendor oversight, the rulemaking would allow routine vendor monitoring and compliance investigations to be conducted virtually so that State agencies may use oversight methods appropriate for vendors. As with initial vendor preauthorization visits, FNS estimates that it takes State agency staff an average of 20 minutes round trip to travel to a brick-and-mortar or mobile vendor.

Considering the additional virtual routine monitoring visits on internet vendors authorized under the proposed rule would add 40.00 more hours to State agencies' reporting burden. FNS is seeking approval for the requirement for on-site routine vendor monitoring and its associated burden through a separate revision to OMB Control Number 0584-0043. The overall increase in the number of WIC-authorized vendors would increase the State agency recordkeeping burden for routine vendor monitoring by 20.00 hours, from 1,029.10 to 1,049.10 hours.

State agency staff conduct on-site compliance investigations of five percent of vendors each year, which requires 20 minutes of travel time and two hours to complete an investigation of a brick-and-mortar or mobile vendor. FNS is seeking approval for the State agency requirement to conduct on site compliance investigations and its associated burden through a separate revision to OMB Control Number 0584-00343. State agencies would also be required to conduct virtual compliance investigations of internet vendors

each year, resulting in 80.00 additional burden hours. The overall increase in the number of WIC-authorized vendors would increase the State agency recordkeeping burden for compliance investigations by 80.00 hours.

The addition of 800 internet vendors under the proposed rule would also increase State agencies' reporting burden for vendor training, increasing associated burden hours by 1,600.00 hours per year. It takes two hours for vendors to attend the annual training provided by State agencies. FNS is seeking approval for the requirement for annual vendor training and its associated burden through a separate revision to OMB Control Number 0584-0043. Authorizing 800 internet vendors under the proposed rule would result in an additional 1,600.00 hours of reporting burden for those new vendors to receive training.

Further, FNS estimates that the increase in the overall number of WIC-authorized vendors will result in proportionate increases in both the number of vendors classified as "above-50-percent" vendors and the number of vendors that demonstrate a pattern of violations during investigations. These changes would result in associated increases in: the State agency reporting burden related to assessing a vendor's food sales data to determine if they are an "above-50-percent" vendor (288.00 additional hours); the vendor reporting burden required to provide such sales data (144.00 additional hours); the reporting burden for above-50-percent vendors who request approval from their State agency to provide incentive items to WIC shoppers (7.60 additional hours); the State agency recordkeeping burden to collect information on above-50-percent vendors' incentive items (7.60 additional hours); and the State agency recordkeeping burden to notify vendors in writing of violations revealed during an investigation (10.00 additional hours).

The number of respondents and frequency of responses for the State agency recordkeeping burden associated with collecting information on above-50-percent

vendors' incentive items have also been adjusted to correct for clerical errors in this information collection. Under current regulations, the number of respondents is 4, rather than 389.20 State agencies, and the frequency of responses is 97.30, rather than 1 response per year. These clerical corrections do not affect the existing State agency recordkeeping burden as the underlying math is unchanged. As noted, the expected increase in the number of above-50-vendors with the addition of internet vendors in this proposed rule would increase the number of above-50-vendors that each State agency collects information from each year from 97.30 to 99.20, resulting in the 7.60 hour increase in the associated State agency recordkeeping burden stated in the previous paragraph.

(ii) Burden Revisions Related to Program Modernization

In recognition of the efficiency of using electronic benefit redemption data to analyze the prices vendors charge for supplemental foods, the proposed rule would remove the requirement that State agencies with access to EBT data collect shelf prices from vendors on a biannual basis or seek an exemption from FNS. Until all State agencies have fully implemented EBT systems, FNS estimates that four State agencies will continue to be required to collect shelf prices from WIC-authorized vendors each year, and that one of these State agencies will request an exemption to this collection requirement from FNS. Removing the shelf price collection requirement for State agencies with access to EBT data would significantly decrease the reporting burden for WIC State agencies (-158,997.93 hours for collecting shelf prices and -37.33 hours for preparing exemption requests) and WIC-authorized vendors (-140,497.26 hours).

State agencies are required to submit requests for approval for costs of capital expenditures per § 246.14(d). FNS estimates that implementing updates to State agency systems to allow for online ordering and transactions will cost approximately \$90,000 per State agency. Therefore, the proposed rule is expected to increase the number of State

agencies submitting such requests during online shopping implementation from 20 to 30 per year, which would increase the associated reporting burden by 1,600.00 hours.

The proposed rule would allow State agencies to adopt EBT transaction authentication technologies other than PIN authentication. State agencies would be required to develop transaction authentication policies that are appropriate for the authentication technology they choose to adopt and in accordance with standards established by the Department.

FNS estimates that five State agencies will adopt a new transaction authentication method each year, requiring them to spend an estimated 25 hours developing a new transaction authentication policy. This would add 125.00 hours to State agencies' reporting burden.

The proposed rule would encourage State agencies to issue electronic benefits remotely and mail EBT cards to participants to reduce the number of clinic visits households make to receive benefits. FNS expects that this proposal will decrease the burden associated with picking up food instruments and cash-value vouchers outside of a certification clinic visit by 1,049,334.86 hours. These estimates assume that: on average, WIC households consist of two WIC participants,<sup>15</sup> requiring only one trip to the clinic to pick up both participants' benefits; currently, households in State agencies without an online EBT system are required to travel to a clinic to pick up paper food instruments and CVVs or reload offline EBT cards three times a year outside of another scheduled appointment; and currently, new participants in State agencies with online EBT systems are required to pick up their EBT card in person. With the proposed rule, only participants who need to reload an offline EBT card would be required to travel to a clinic to pick up benefits in person. FNS estimates that on average, picking up benefits in person takes a household 30 minutes, including 26 minutes of round-trip travel time and 4 minutes to obtain the

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<sup>15</sup> U.S. Department of Agriculture, "WIC Participant and Program Characteristics 2020 Appendices." *WIC Participant and Program Characteristics 2020*, Alexandria, VA: February 2022, Table C.14. Available online at: <https://www.fns.usda.gov/wic/participant-program-characteristics-2020>.

benefits.<sup>16</sup> FNS is seeking approval for the burden for participants to visit a clinic to pick up food instruments and CVVs outside of a scheduled appointment and its associated burden through a separate revision to OMB Control Number 0584-0043.

Finally, the proposed rule would make small adjustments to the information that State agencies are required to submit annually to FNS in their State Plans. FNS estimates that one State agency currently provides justification to authorize a mobile vendor in their State Plan which requires approximately one hour to complete. Therefore, across all State agencies, the removal of the requirement to justify authorization of mobile vendors would result in less than a one-minute decrease in the number of hours that an average WIC State agency spends preparing their State Plan each year (from 134.62 to 134.61 hours;  $1 \text{ hour} \div 89 \text{ State agencies} = 0.01 \text{ hours}$ ). This change to the State Plan requirement would result in a small overall decrease in State agencies' reporting burden of 0.89 hours.

Additionally, the proposed rule would allow State agencies to use non-uniform food instruments within a food delivery system when justified in their State Plan. FNS estimates that five State agencies will pursue using non-uniform food instruments through their State Plan as they either transition from offline to online EBT systems or test alternative payment technologies. These justifications each would require an estimated one hour to complete, resulting in an increase to State agencies' total reporting burden of 5.00 hours.

### (iii) Costs Associated with the Proposed Rule and OMB Control Number 0584-0043

In addition to the changes to the information collection burdens discussed in this section, implementing the proposed rule is expected to create additional costs for State agencies and WIC participants. As previously noted, FNS estimates that it will cost each of the 89

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<sup>16</sup> This estimate is based on the amount of time WIC participants reported traveling to the WIC clinic. U.S. Department of Agriculture, Food and Nutrition Service, "Appendix G. Program Experiences Survey Tables." *Third National Survey of WIC Participants*, Alexandria, VA: 2021, Table 5c.2. Available online at: <https://www.fns.usda.gov/wic/third-national-survey-wic-participants>.



WIC State agencies approximately \$90,000 to update their EBT system to implement online shopping. Altogether, these one-time implementation costs would total \$8.01 million. After implementation, the Department anticipates that maintenance of such systems will cost approximately \$4,000 per month. Therefore, in an average year following implementation of online shopping in all State agencies, these ongoing maintenance costs would total \$4.27 million per year.

The proposed rule would add staffing standards at § 246.3(e) for two new State agency positions: the WIC Food Delivery Coordinator and the WIC Customer Service Coordinator. FNS estimates that 51 State agencies have over 7,000 monthly participants and would be required to employ full-time or equivalent staff persons for both proposed positions, and that current staff meet the requirements for the WIC Food Delivery Coordinator at 13 State agencies, and for the WIC Customer Service Coordinator at 3 State agencies. Additionally, 22 State agencies with monthly participation above 500 but below 7,000 would need to employ a half-time or equivalent staff person for these two new positions, equivalent to 11 additional full-time WIC Food Delivery Coordinators and 11 additional full-time WIC Customer Service Coordinators. Therefore, FNS estimates that in response to the proposed staffing standards, State agencies would need to fill 108 new full-time positions (49 WIC Food Delivery Coordinators and 59 WIC Customer Service Coordinators). Altogether, FNS estimates that these new part-time and full-time staffing standards would cost State agencies approximately \$117,590 for each full-time position, or \$12.7 million total, in staffing costs per year.<sup>17</sup>

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<sup>17</sup> Hourly compensation is based on the hourly total compensation for all State and local workers from calculated by the U.S. Bureau of Labor Statistics for FY 2021 (U.S. Bureau of Labor Statistics, “Total compensation cost per hour worked for state and local government workers.” Available online at: <https://data.bls.gov/timeseries/CMU3010000000000D>.), adjusted for inflation. Total annual compensation for a full-time position is calculated by multiplying hourly compensation by 1,767 hours (Organisation for Economic Co-operation and Development (OECD) Labour Force Statistics, “2020 Average annual hours actually worked per worker in United States.” Available online at: <https://stats.oecd.org/index.aspx?DataSetCode=ANHRS>).

The proposed rule would add a provision at § 246.12(h)(3)(xxxiii) that would allow WIC participants who choose to shop for supplemental foods online to pay for fees associated with such services using another tender type, as long as those fees are also assessed to non-WIC customers using the same services. FNS estimates that an average online grocery order in 2024 will be assessed \$9.59 in delivery and service fees. Additionally, FNS estimates that once online shopping has been implemented across all State agencies, 20 percent of WIC households (consisting of two WIC participants, on average) would make one online WIC order each month and that 33 percent of WIC online shopping orders will be placed for home delivery. Therefore, FNS estimates that approximately 229,000 households would place an online order for home delivery each month, costing WIC participants a total of about \$26.4 million per year if all State agencies implemented online shopping.

(iv) Summary of Revisions to OMB Control Number 0584-0043

The current approved burden for OMB Control Number 0584-0043 is 4,547,099 hours and 48,798,800 total responses. The baseline current burden discussed here and in the tables below includes revisions to OMB Control Number 0584-0043 that FNS is seeking separately. The updated current burden for this information collection is 6,144,866 hours and 51,864,053 total responses. Changes to the burden due to the rulemaking decrease the total burden by 1,357,162 hours, resulting in a revised burden of 4,787,704 hours. The proposed rule is estimated to decrease the revised total number of responses by 2,260,446 resulting in 49,603,607 total responses. The estimated addition of 800 internet vendors due to the proposed rule is expected to increase the total number of respondents for this information collection from 6,913,189 to 6,913,989. One-time costs associated with the proposed rule are expected to total \$8.01 million and annual costs and fees following implementation of online shopping are estimated to total \$47.64 million. The average

burden per response, the annual burden hours, and the total fees and costs related to this proposed rule are explained below and summarized in the tables which follow.

The change in burden hours to OMB Control Number 0584-0043 and costs associated with the proposed rule are best estimates. The Department requests comments on the burden and all proposed changes. Comments received in response to the proposed rule and burden estimates will inform the final burden estimates.

***Respondents: State agencies, including Indian Tribal Organizations and U.S.***

***Territories*** (note that burden estimates for local agencies are not affected by this proposed rule).

*Estimated Number of Respondents: 89*

Reporting

*Estimated Number of Reporting Responses per Respondent: 651.22*

*Estimated Number of Responses: 57,958.17*

*Estimated Hours per Reporting Response: 2.21*

*Estimated Total Annual Reporting Burden Hours for Respondents: 127,802.22*

Recordkeeping

*Estimated Number of Recordkeeping Responses per Respondent: 151.80*

*Estimated Number of Responses: 13,510.00*

*Estimated Hours per Recordkeeping Response: 1.08*

*Estimated Total Annual Recordkeeping Burden Hours for Respondents: 14,559.10*

***Respondents: Individuals and households.***

Reporting

*Estimated Number of Respondents: 347,366*

*Estimated Number of Responses per Respondent: 2.63*

*Estimated Number of Responses: 911,835.81*

*Estimated Hours per Response: 0.50*

*Estimated Total Annual Burden on Respondents: 455,917.90*

**Respondents: WIC-authorized vendors.**

Reporting

*Estimated Number of Respondents: 41,964 (41,163 brick-and-mortar vendors, 800*

*internet vendors, and 1 mobile vendor)*

*Estimated Number of Responses per Respondent: 1.39*

*Estimated Number of Responses: 58,145.63*

*Estimated Hours per Response: 1.83*

*Estimated Total Annual Burden on Respondents: 106,437.67*

**Estimated Capital, Start-up, Operation, Maintenance and Implementation Costs**

**and Fees:**

<b>Summary of Costs Associated with the Proposed Rule</b>				
<b>Description of Cost</b>	<b>Number of Respondents</b>	<b>One-Time Costs (millions)</b>	<b>Annual Costs (millions)</b>	<b>Total Costs (millions)</b>
<b>State Agencies</b>				
Systems development and maintenance for online shopping	89	\$8.01	\$4.27	\$12.28
New State agency staff positions: WIC Customer Service and Food Delivery coordinators	108	\$0.00	\$12.70	\$12.70
<b>Individuals and Households</b>				
Fees associated with online shopping	229,000	\$0.00	\$26.40	\$26.40
<b>Total Costs</b>		<b>\$8.01</b>	<b>\$47.64</b>	<b>\$55.65</b>

**Table 3: Estimated Annual Reporting and Recordkeeping Burden for OMB # 0584-0043 as a Result of Proposed Rule Changes**

<b>Regulatory Citation</b>	<b>Description of Activities</b>	<b>Estimated Number of Respondents</b>	<b>Frequency of Responses</b>	<b>Total Annual Responses</b>	<b>Average Burden Hours per Response</b>	<b>Estimated Total Burden Hours</b>	<b><i>Current Burden Hours in OMB # 0584-0043*</i></b>	<b>Estimated Change in Burden Hours Due to Rulemaking</b>
<b>REPORTING BURDEN ESTIMATES</b>								
<b>Affected Public: State Agencies (including Indian Tribal Organizations and U.S. Territories)</b>								
<b>246.4</b>	State Plan	89.00	1.00	89.00	134.61	11,980.29	<i>11,981.18</i>	-0.89
<b>246.4(a)(14)(i)</b>	State Plan: Justification for non-uniform food instruments	5.00	1.00	5.00	1.00	5.00	<i>0.00</i>	5.00
<b>246.12(g)(4)(i)</b>	Vendor food sales data	89.00	42.28	3,763.00	4.00	15,052.00	<i>14,764.00</i>	288.00
<b>246.12(g)(4)(ii)(B)</b>	Vendor shelf prices	3.00	943.01	2,829.03	2.00	5,658.07	<i>164,656.00</i>	-158,997.93
<b>246.12(g)(4)(ii)(B)</b>	Vendor shelf prices exemption	1.00	0.33	0.33	8.00	2.67	<i>40.00</i>	-37.33
<b>246.12(g)(5)</b>	Vendor initial preauthorization visits (virtual)	80.00	10.00	800.00	0.67	536.00	<i>0.00</i>	536.00
<b>246.12(h)(1)(i)</b>	Vendor applications & agreements	89.00	94.30	8,392.80	0.67	5,595.20	<i>10,188.09*</i>	-4,592.89
<b>246.12(i)(1)</b>	Vendor training	89.00	471.51	41,964.00	2.00	83,928.00	<i>82,328.00</i>	1,600
<b>246.12(j)(2)</b>	Routine vendor monitoring (virtual)	80.00	0.50	40.00	1.00	40.00	<i>0.00</i>	40.00
<b>246.12(j)(4)</b>	Vendor compliance investigations (virtual)	80.00	0.50	40.00	2.00	80.00	<i>0.00</i>	80.00
<b>246.12(bb)(2)</b>	Transaction authentication policy development	5.00	1.00	5.00	25.00	125.00	<i>0.00</i>	125.00

<b>246.14(d)</b>	ADP proposals – Costs allowable with approval	30.00	1.00	30.00	160.00	4,800.00	3,200.00	1,600.00
<b>Subtotal Reporting: State Agencies</b>		<b>89.00</b>	<b>651.22</b>	<b>57,958.17</b>	<b>2.21</b>	<b>127,802.22</b>	<b>287,157.27*</b>	<b>-159,355.05</b>

<b>Affected Public: Individuals and Households: Applicants for Program Benefits</b>								
<b>246.12(r)(4) &amp; (r)(5)</b>	Food instrument and cash-value voucher pick up (non-certification clinic visits)	347,366.02	2.63	911,835.81	0.50	455,917.90	1,505,252.76*	- 1,049,334.86
<b>Subtotal Reporting: Individuals/Households</b>		<b>347,366.02</b>	<b>2.63</b>	<b>911,835.81</b>	<b>0.50</b>	<b>455,917.90</b>	<b>1,505,252.76*</b>	<b>- 1,049,334.86</b>
<b>Affected Public: Business: Retail Vendors (WIC-Authorized Food Stores)</b>								
<b>246.12(g)(4)(i)</b>	Vendor food sales data for A50s	3,763.00	1.00	3,763.00	2.00	7,526.00	7,382.00	144.00
<b>246.12(g)(4)(ii)(B)</b>	Vendor shelf prices	1,414.52	2.00	2,829.03	2.00	5,658.07	146,155.33	-140,497.26
<b>246.12(g)(5)</b>	Vendor initial preauthorization visits (virtual)	800.00	1.00	800.00	0.67	536.00	0.00	536.00
<b>246.12(h)</b>	Vendor applications & Agreements	8,392.80	1.00	8,392.80	1.00	8,392.80	13,584.12	-5,191.32
<b>246.12(h)(8)(i)</b>	Vendor incentive items	396.80	1.00	396.80	1.00	396.80	389.20	7.60
<b>246.12(i)(1)</b>	Vendor training	41,964.00	1.00	41,964.00	2.00	83,928.00	82,328.00*	1,600.00
<b>Subtotal Reporting: Retail Vendors</b>		<b>41,964.00</b>	<b>1.39</b>	<b>58,145.63</b>	<b>1.83</b>	<b>106,437.67</b>	<b>249,838.65*</b>	<b>-143,400.98</b>
<b>GRAND SUBTOTAL: REPORTING</b>		<b>389,419.02</b>	<b>2.64</b>	<b>1,027,939.61</b>	<b>0.67</b>	<b>690,157.80</b>	<b>2,042,248.68</b>	<b>- 1,352,090.88</b>
<b>RECORDKEEPING BURDEN ESTIMATES</b>								
<b>Affected Public: State Agencies (including Indian Tribal Organizations and U.S. Territories)</b>								
<b>246.12(h)(1)(i)</b>	Vendor applications & agreements	89.00	94.30	8,392.80	1.00	8,392.80	13,584.12	-5,191.32
<b>246.12(h)(8)(i)</b>	Vendor incentive items	4.00	99.20	396.80	1.00	396.80	389.20	7.60

<b>246.12(j)(6)</b>	Routine vendor monitoring	89.00	23.58	2,098.20	0.50	1,049.10	<i>1,029.10</i>	20.00
<b>246.12(j)(6)(ii)</b>	Vendor compliance investigations	89.00	23.58	2,098.20	2.00	4,196.40	<i>4,116.40</i>	80.00
<b>246.12(l)(3)</b>	Vendor notice of violations	89.00	5.89	524.00	1.00	524.00	<i>514.00</i>	10.00
<b>SUBTOTAL: RECORDKEEPING</b>		<b>89.00</b>	<b>151.80</b>	<b>13,510.00</b>	<b>1.08</b>	<b>14,559.10</b>	<b><i>19,632.82</i></b>	<b>-5,073.72</b>
<b>GRAND TOTAL: REPORTING AND RECORDKEEPING DUE TO RULEMAKING</b>		<b>389,419.02</b>	<b>2.67</b>	<b>1,041,449.61</b>	<b>0.68</b>	<b>704,716.90</b>	<b><i>2,061,881.50*</i></b>	<b>- 1,357,164.60</b>

\* To capture the estimated changes to the burden from the proposed rule as accurately as possible, the current hours reflect a baseline burden that includes revisions to OMB Control Number 0584-0043 that FNS is seeking separately.

#### Summary of Requested Burden Revisions:

<b>Table 4: Summary of Requested Burden Revisions to # 0584-0043</b>			
	<b>Responses</b>	<b>Respondents</b>	<b>Time Burden</b>
<b>Current Inventory:* Total Burden</b>	<b>51,864,053</b>	<b>6,913,189</b>	<b>6,144,866</b>
Current Inventory:* Reporting	24,320,009	6,913,189	5,614,900
Current Inventory:* Recordkeeping	27,544,044	11,897	529,967
<b>Total Burden Revision Requested</b>	<b>49,603,607</b>	<b>6,913,989</b>	<b>4,787,704</b>
Burden Revision Requested: Reporting	22,064,657	6,913,989	4,262,811
Burden Revision Requested: Recordkeeping	27,538,950	11,897	524,893
<b>Difference in Total Burden from Rulemaking</b>	<b>-2,260,446</b>	<b>800</b>	<b>-1,357,164</b>

\* To capture the estimated changes to the burden from the proposed rule as accurately as possible, the “current inventory” reflects a baseline that includes revisions to OMB Control Number 0584-0043 that FNS is seeking separately.

b. Revisions to OMB Control Number 0584-0401

*Title:* Food Delivery Portal (FDP) Data Collection

*OMB Number:* 0584-0401

*Expiration Date:* 12/31/2024

*Type of Request:* Revision of a currently approved collection.

*Abstract:* This is a revision of existing information collection requirements in the information collection under OMB Control Number 0584-0401 that are affected by this proposed rulemaking. This proposed rule would revise regulations around data submission timelines for information that State agencies must report to FNS using the Food Delivery Portal (FDP). All WIC State agencies are required to submit information on their vendor monitoring and investigation activities, in accordance with § 246.12(j)(5). The revisions in the proposed rule to this section would replace the current, annual submission deadline of February 1 of each fiscal year with submission timelines that may be as frequent as quarterly but not less than annually, based on system capabilities and reporting needs. Therefore, this proposed rule revises the frequency of data preparation and submissions to FDP included in the current information collection to show the possibility of quarterly submissions. Each quarterly submission would contain one-fourth of the data typically included in an annual submission (i.e., 3 months of data rather than 12 months). FDP reporting requirements, including data submission timelines, would be communicated to State agencies with advance notice to prepare submissions.

FNS estimates that 73 of the 89 WIC State agencies enter information into FDP using the data upload process. WIC State agencies using this option must 1) update redemption data, monitoring activities, compliance investigations, sanctions, and administrative reviews on existing vendors and 2) complete all data fields for new vendors, authorized during the reporting period. In instances where data submission timelines are set as quarterly, FNS estimates that it will take an average of 7.5 minutes (0.125 hours) for a



WIC State agency to upload its vendor data. This is approximately a quarter of the time that FNS estimates it currently takes State agencies to upload annual data. In total, State agencies would spend an estimated 36.50 hours uploading data annually ( $73 \text{ State agencies} \times 4 \text{ submissions} = 292 \text{ annual responses} \times 0.125 \text{ hours per response} = 36.50 \text{ burden hours}$ ). The changes to this burden estimate are the frequency of data uploads and amount of time each data upload requires. The total hours would not be affected.

FNS currently estimates that each State agency requires approximately 10 hours to generate the data for each annual FDP submission. With the possibility of quarterly data submissions, FNS estimates that it would require each State agency an average of 2.5 hours per response ( $10 \text{ hours} \div 4 = 2.5 \text{ hours}$ ). These responses may need to be prepared up to four times a year under the proposed rule. Therefore, across all 89 State agencies, 356 data submissions would be prepared each year ( $89 \text{ State agencies} \times 4 \text{ submissions per year}$ ), requiring 890 total burden hours ( $356 \text{ submissions} \times 2.5 \text{ hours per submission} = 890$ ). The only changes to this burden estimate are the frequency of data uploads and amount of time each data upload requires. The total hours would not be affected.

Currently, FNS estimates that 16 WIC State agencies choose to manually add or update records in FDP, rather than extracting the information from their management information system (MIS) or vendor documentation records. While the data reporting frequency for all State agencies may be as frequent as quarterly under the proposed rule, FNS does not anticipate that the burdens associated with manually adding or updating records in FDP would change with the increased frequency of submissions, because the same number of State agencies would submit the same total number of responses throughout the course of one year.

(i) Summary of Revisions to OMB Control Number 0584-0401

The current approved burden for OMB Control Number 0584-0401 is 1,189 hours and 707 total responses. Changes to the burden due to the rulemaking have no effect on the

total number of burden hours, which would remain 1,189 hours. The proposed rule is estimated to increase the total number of responses by 486, resulting in 1,139 annual responses due to the increased frequency of submissions to FDP. The total number of respondents for this information collection is not expected to change from 194. The average burden per response and the annual burden hours related to this proposed rule are explained below and summarized in the tables which follow.

The change in burden hours to OMB Control Number 0584-0401 associated with the proposed rule are best estimates. The Department requests comments on the burden and all proposed changes. Comments received in response to the proposed rule and burden estimates will inform the final burden estimates.

***Respondents: State agencies, including Indian Tribal Organizations and U.S. Territories.***

*Estimated Number of Respondents: 162*

**Reporting**

*Estimated Number of Reporting Responses per Respondent: 4*

*Estimated Number of Responses: 648*

*Estimated Hours per Reporting Response: 1.43*

*Estimated Total Annual Reporting Burden Hours for Respondents: 926.50*

<b>Table 5: Estimated Annual Reporting and Recordkeeping Burden for OMB # 0584-0401 as a Result of Proposed Rule Changes</b>								
<b>Regulatory Citation</b>	<b>Description of Activities</b>	<b>Estimated Number of Respondents</b>	<b>Frequency of Responses</b>	<b>Total Annual Responses</b>	<b>Average Burden Hours per Response</b>	<b>Estimated Total Burden Hours</b>	<b><i>Current OMB Approved Burden Hours in OMB # 0584-0401</i></b>	<b>Estimated Change in Burden Hours Due to Rulemaking</b>
<b>REPORTING BURDEN ESTIMATES</b>								
<b>Affected Public: State Agencies (including Indian Tribal Organizations and U.S. Territories)</b>								
<b>246.12(j)(5)</b>	Data Upload	73	4.00	292.00	0.125	36.50	<i>36.50</i>	0.00
<b>246.12(j)(5)</b>	Data Preparation	89	4.00	356.00	2.500	890.00	<i>890.00</i>	0.00
<b>TOTAL: REPORTING DUE TO RULEMAKING</b>		<b>162</b>	<b>4.00</b>	<b>648.00</b>	<b>1.43</b>	<b>926.50</b>	<b><i>926.50</i></b>	<b>0.00</b>

Summary of Requested Burden Revisions:

<b>Table 6: Summary of Requested Burden Revisions to OMB # 0584-0401</b>			
	<b>Responses</b>	<b>Respondents</b>	<b>Time Burden</b>
Current OMB Inventory: Total Burden	707	194	1,189
Total Burden Revision Requested	1,193	194	1,189
<b>Difference in Total Burden from Rulemaking</b>	<b>486</b>	<b>0</b>	<b>0</b>

## **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 246**

Administrative practice and procedure, Civil rights, Food assistance programs, Foods, Grants administration, Grant programs- health, Grant programs- social programs, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Public health, Reporting and recordkeeping requirements, Women.

Accordingly, the FNS proposes to amend 7 CFR part 246 as follows:

### **PART 246 – SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN**

1. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

2. In § 246.2:

- a. Remove the definition of “Above-50-percent vendors” and add in its place the definition of “Above-50-percent vendor”;
  - b. Add the definitions of “Brick-and-mortar vendor” and “Cash-value benefit” in alphabetical order;
  - c. Revise the definitions of “Cash-value voucher” and “Compliance buy”;
  - d. Remove the definition of “Electronic Benefit Transfer” and add in its place the definition of “Electronic benefit transfer”;
  - e. Add the definition of “Electronic benefits” in alphabetical order;
  - f. Revise the definitions of “Food instrument” and “Home food delivery contractor”;
  - g. Add the definitions of “Internet vendor” and “Mobile vendor” in alphabetical order;
- and

h. Revise the definitions of “Routine monitoring” and “Vendor”.

The revisions and additions read as follows:

**§ 246.2 Definitions.**

\* \* \* \* \*

*Above-50-percent vendor* means any type of vendor that derives more than 50 percent of its annual food sales revenue from WIC food instruments, and new vendor applicants expected to meet this criterion under guidelines approved by FNS.

\* \* \* \* \*

*Brick-and-mortar vendor* means a type of vendor authorized to provide authorized supplemental foods to participants through transactions at a single, physical, fixed location. All transactions that take place at the brick-and-mortar vendor will be assigned to that vendor.

*Cash-value benefit* means a type of electronic benefit that is a fixed-dollar amount used to obtain authorized fruits and vegetables.

*Cash-value voucher* means a fixed-dollar amount check, voucher, or other document which is used to obtain authorized fruits and vegetables.

\* \* \* \* \*

*Compliance buy* means a covert investigation in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts food instruments, cash-value vouchers, or electronic benefits, and does not reveal during the visit their identity as a program representative.

\* \* \* \* \*

*Electronic benefit transfer (EBT)* means a benefit delivery method that permits electronic access to WIC food benefits using a card or other electronic benefit access device or technology approved by the Secretary.

*Electronic benefits* mean the WIC benefits for supplemental foods prescribed to a participant and contained within the participant's benefit balance.

\* \* \* \* \*

*Food instrument* means a paper voucher, check, coupon, other document; or an EBT card or other electronic benefit access device or technology that is used to obtain supplemental foods.

\* \* \* \* \*

*Home food delivery contractor* means a business entity that contracts directly with a State agency to deliver authorized supplemental foods to a location designated by the participant or State agency under a home food delivery system.

\* \* \* \* \*

*Internet vendor* means a type of vendor authorized to provide authorized supplemental foods to participants through internet-based transactions.

\* \* \* \* \*

*Mobile vendor* means a type of vendor authorized to provide authorized supplemental foods to participants through transactions that take place at a truck, bus, pushcart, or other mobile vehicle.

\* \* \* \* \*

*Routine monitoring* means overt monitoring during which program representatives identify themselves to vendor personnel.

\* \* \* \* \*

*Vendor* means a business entity authorized by the State agency to provide authorized supplemental foods to participants under a retail food delivery system. Each vendor with a unique SNAP authorization number must be authorized separately. For vendors that are not SNAP authorized, each single, separate location constitutes a unique vendor from other store locations and must be authorized separately. A vendor providing supplemental

foods through any means other than a single, physical, fixed location must be authorized separately from any related brick-and-mortar vendors.

\* \* \* \* \*

3. In § 246.3:

- a. Revise paragraph (e)(5); and
- b. Redesignate paragraph (e)(6) as paragraph (e)(7) and add a new paragraph (e)(6).

The revision and addition read as follows:

**§ 246.3 Administration.**

\* \* \* \* \*

(e) \* \* \*

(5) For food delivery system management, one full-time or equivalent staff person when the monthly participation is above 7,000, or a half-time or equivalent staff when the monthly participation exceeds 500 and the State agency manages its own vendor cost containment system. The staff person will be named WIC Food Delivery Coordinator and must meet State personnel standards and qualifications in paragraph (e)(5)(i) or (ii) of this section and have the qualifications in paragraph (e)(5)(iii) of this section. Upon request, an exception to these qualifications may be granted by FNS to allow for existing personnel or for special circumstances. The WIC Food Delivery Coordinator must -

(i) Hold a Master's degree or higher, with sufficient statistical coursework to independently analyze and act upon food delivery data, including vendor cost containment data, and have at least one year experience in:

(A) Public health, government administration, or equivalent; or

(B) A WIC food delivery or vendor management position that involved data analysis and vendor cost containment activities; or

(ii) Hold a Bachelor's degree or equivalent educational experience from an accredited four-year institution, with sufficient statistical coursework to independently analyze and

act upon food delivery data, including vendor cost containment data; and have at least three years of experience in:

(A) Public health, government administration, or equivalent; or

(B) A WIC food delivery or vendor management position that involved data analysis and vendor cost containment activities; and

(iii) Have demonstrated proficiency in at least one of the following: Program management skills; experience coordinating with information technology contractors; or experience with external stakeholder engagement.

(6) To ensure the State agency's operations are participant-centered and comply with Federal requirements, one full-time or equivalent staff person designated when the monthly participation is above 7,000, or a half-time or equivalent staff when the monthly participation exceeds 500. The staff person will be named WIC Customer Service Coordinator and will be responsible for improvements related to participant-facing activities and technologies. The WIC Customer Service Coordinator must meet State personnel standards and qualifications in paragraph (e)(6)(i) or (ii) of this section and have the qualifications in paragraph (e)(6)(iii) of this section. Upon request, an exception to these qualifications may be granted by FNS to allow for existing personnel or for special circumstances. The WIC Customer Service Coordinator must -

(i) Hold a Master's degree or higher, and have at least one year experience in:

(A) Public health, government administration, or equivalent; product or technology management; acquisitions management; or

(B) A position focused on innovation or modernization with similar complexities to the WIC Program; or

(ii) Hold a Bachelor's degree or equivalent educational experience from an accredited four-year institution and have at least three years of experience in:



(A) Public health, government administration, or equivalent; product or technology management; acquisitions management; or

(B) A position focused on innovation or modernization with similar complexities to the WIC Program; and

(iii) Have demonstrated proficiency in at least one of the following: Product management or product ownership (to include owning business and product vision of technology systems, defining and measuring project objectives, and/or communication and collaboration across cross-functional teams); experience with user-centered design, agile development, DevOps, and other modern technologies, experience managing information technology contractors that employ modern practices; extensive IT or acquisition management experience; experience with contract management.

\* \* \* \* \*

4. In § 246.4:

a. Remove and reserve paragraph (a)(14)(xv); and

b. Revise paragraph (a)(23).

The revision reads as follows:

**§ 246.4 State plan.**

\* \* \* \* \*

(a) \* \* \*

(23) A plan to improve access to the Program for participants and prospective applicants, with additional focus on those who are employed and/or reside in rural areas. The plan must identify and address the needs of these individuals, and must include, at a minimum, policies and procedures to minimize the time they must spend away from work and the distances they must travel. This plan must include measures to improve access to the Program through the remote issuance of food instruments, cash-value vouchers, and/or electronic benefits, as applicable, to participants through means other than direct

participant pick-up, pursuant to § 246.12(r)(4) and (5). The State agency must also describe the State agency's policy for approving transportation of participants to and from WIC clinics per § 246.14(c)(7). This plan must describe how the State agency will ensure the integrity of Program services and fiscal accountability.

\* \* \* \* \*

5. In § 246.7, revise paragraph (f)(2)(iv) to read as follows:

**§ 246.7 Certification of participants.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(iv) Each local agency using a retail food delivery system must issue food instruments, cash-value vouchers, or electronic benefits, as applicable, to the participant at the same time as notification of certification. Such food instruments, cash-value vouchers, and electronic benefits must be provided for the current month or the remaining portion thereof and must be transactable immediately upon receipt by the participant. Local agencies may issue electronic benefits remotely or mail the food instruments and cash-value vouchers with the notification of certification, as provided in § 246.12(r)(4) and (5).

\* \* \* \* \*

6. In § 246.12:

- a. Revise paragraph (b);
- b. Revise the third sentence of the introductory text of paragraph (g)(4), paragraphs (g)(4)(ii)(B) and (g)(5), the first sentence of paragraph (g)(8), and the last sentence of paragraph (g)(9);
- c. Revise the second sentence of paragraph (h)(1)(i) and paragraphs (h)(3)(ii), (v), and (vi);
- d. Add paragraphs (h)(3)(xxxii) and (xxxiii);

- e. Revise paragraphs (j)(5) and (j)(6)(ii)(B);
- f. Revise the first sentence of the introductory text of paragraph (m);
- g. Revise paragraphs (r)(2) and (4);
- h. Redesignate paragraphs (r)(5) and (6) as paragraphs (r)(6) and (7), respectively, and add a new paragraph (r)(5);
- i. Remove the period at the end of newly redesignated paragraph (r)(6) and add “; and” in its place;
- i. Revise paragraphs (v)(1)(iv) and (ix);
- j. Revise paragraph (x)(2)(iii);
- k. Add paragraph (x)(4);
- l. Redesignate paragraphs (bb)(2) and (3) as paragraph (bb)(3) and (4), respectively, and add a new paragraph (bb)(2).

The revisions and additions read as follows:

**§ 246.12 Food delivery methods.**

\* \* \* \* \*

(b) *Uniform food delivery systems.* The State agency may operate a combination of up to three types of food delivery systems under its jurisdiction—retail, home food delivery, and direct distribution. These three food delivery systems must be procedurally uniform throughout the jurisdiction of the State agency and the combination of systems used must ensure adequate participant access to supplemental foods. When used, food instruments must be uniform within each type of system, except when the use of non-uniform food instruments is necessary to meet the special needs described and approved in the State agency’s State Plan per § 246.4(a)(14)(i), or when transitioning from one type of food instrument to another.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \* The State agency must consider a vendor applicant's prices for non-WIC customers or the prices it bids for supplemental foods, which must not exceed the price charged to non-WIC customers. \* \* \*

\* \* \* \* \*

(ii) \* \* \*

(B) The analysis of vendor prices to monitor vendor compliance with paragraphs (g)(4)(i)(C), (g)(4)(ii)(C), and (g)(4)(iii) of this section and to ensure State agency policies and procedures dependent on price data are efficient and effective. State agencies without access to electronic benefit redemption data must collect vendor shelf prices at least every six months to ensure compliance with this paragraph (g)(4)(ii)(B). FNS may grant an exemption from the requirement to collect shelf prices if the State agency demonstrates to FNS' satisfaction that an alternative methodology for monitoring vendor compliance with paragraphs (g)(4)(i)(C), (g)(4)(ii)(C), and (g)(4)(iii) of this section is efficient and effective and other State agency policies and procedures are not dependent on frequent collection of shelf price data. Such exemption would remain in effect until the State agency no longer meets the conditions on which the exemption was based, until FNS revokes the exemption, or for three years, whichever occurs first; and

\* \* \* \* \*

(5) *Preauthorization visit.* The State agency must conduct an on-site or virtual visit prior to or at the time of a vendor's initial authorization.

\* \* \* \* \*

(8) \* \* \* The State agency may limit the periods during which applications for vendor authorization will be accepted and processed, except that applications must be accepted and processed at least once every five years. \* \* \*

\* \* \* \* \*

(9) \* \* \* In addition, if the State agency does not have access to electronic benefit redemption data, the State agency must collect the vendor applicant's current prices for supplemental foods.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) \* \* \* The agreements must be for a period not to exceed five years. \* \* \*

\* \* \* \* \*

(3) \* \* \*

(ii) *No substitutions, cash, credit, cash refunds, or exchanges.* The vendor may provide only the authorized supplemental foods listed on the paper food instrument and cash-value voucher or available in the participant's benefit balance.

(A) Except as specified in paragraph (h)(3)(ii)(C) of this section, the vendor must not provide unauthorized food items, nonfood items, cash, or credit (including rain checks) in exchange for benefits. The vendor must not provide cash refunds or permit exchanges for authorized supplemental foods obtained with benefits, except for exchanges of an identical authorized supplemental food item when the original authorized supplemental food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized supplemental food item means the exact brand, type, physical form, and size as the original authorized supplemental food item obtained and returned by the participant.

(B) The vendor may provide only the authorized infant formula which the vendor has obtained from sources included on the list described in paragraph (g)(11) of this section to participants in exchange for food instruments specifying infant formula.

(C) During a supply chain disruption, as defined in section 17(b)(24) of the Child Nutrition Act of 1966, as amended, including a supplemental food product recall, the

vendor must treat all customers, including WIC participants, parents or caretakers of infant or child participants, and proxies the same. This should be reflected in store recall exchange policies, including policies related to replacements (which may include, but are not limited to, the same product, a substitute product, store credit, or a cash refund).

\* \* \* \* \*

(v) *Purchase price.* The vendor must ensure that the purchase price is calculated in accordance with the procedures described in the vendor agreement. The purchase price must include only the amount(s) for the authorized supplemental food items actually provided, and the WIC participant, parent or caretaker of an infant or child participant, or proxy must be made aware of the total purchase price of the transaction before the transaction is completed.

(vi) *Signature on paper food instruments and cash-value vouchers.* For paper food instruments and cash-value vouchers, the vendor must ensure the participant, parent or caretaker of an infant or child participant, or proxy signs the paper food instrument or cash-value voucher after the purchase price is entered.

\* \* \* \* \*

(xxxii) *Transaction authentication.* The vendor must authenticate transactions in accordance with the policies established by the State agency.

(xxxiii) *Fees associated with online ordering.* A vendor must not charge the State agency for fees associated with online ordering (e.g., delivery, service, convenience, bag fees). If such fees are assessed to non-WIC customers using the same services, WIC participants must be allowed to pay them using another tender type.

\* \* \* \* \*

(j) \* \* \*

(5) *Reporting.* The State agency must send FNS certain vendor, direct distribution contractor, home food delivery contractor, farmer, and farmers' market data containing

information stipulated by FNS via reporting requirements that will be provided to WIC State agencies with advance notification. Reporting requirements will include required data fields and data submission timelines, which may be as frequent as quarterly but not less than annually based on system capabilities and reporting needs. Plans for improvement in the coming year must be included in the State Plan in accordance with § 246.4(a)(14)(iv).

(6) \* \* \*

(ii) \* \* \*

(B) A description of the cashier involved in each transaction, if applicable;

\* \* \* \* \*

(m) \* \* \* Home food delivery systems are systems in which authorized supplemental foods are delivered to a location designated by the participant or State agency. \* \* \*

\* \* \* \* \*

(r) \* \* \*

(2) *Signature requirement.* Ensure that the participant, parent or caretaker of an infant or child participant, or proxy signs for receipt of food instruments, cash-value vouchers, or authorized supplemental foods, except as provided in paragraphs (r)(4) and (5) of this section;

\* \* \* \* \*

(4) *Paper food instrument and cash-value voucher pick up.* Require participants, parents and caretakers of infant and child participants, and proxies to pick up paper food instruments and cash-value vouchers in person when scheduled for in-person nutrition education or for an in-person appointment to determine whether participants are eligible for a second or subsequent certification period. In all other circumstances the State agency may opt to mail paper food instruments or cash-value vouchers unless FNS

determines that it would jeopardize the integrity of program services or program accountability;

(5) *EBT card and electronic benefit issuance.* Ensure participants receive their EBT cards and electronic benefits in accordance with §§ 246.7(f)(2)(iv) and 246.11(a)(2), without jeopardizing the integrity of program services or program accountability. The State agency is encouraged to remotely issue electronic benefits and mail EBT cards, when possible, unless FNS determines that it would jeopardize the integrity of program services or program accountability;

\* \* \* \* \*

(v) \* \* \*

(1) \* \* \*

(iv) Transact and redeem cash-value vouchers or cash-value benefits in accordance with procedures established by the State agency. Such procedures must include:

(A) A requirement for the farmer or farmers' market to allow the participant, parent or caretaker of an infant or child participant, or proxy to pay the difference when the purchase price of fruits and vegetables exceeds the value of the cash-value vouchers or cash-value benefits. This is known as a split tender transaction; and

(B) Procedures to ensure that the WIC participant, parent or caretaker of an infant or child participant, or proxy is made aware of the total purchase price of the transaction before the transaction is completed;

\* \* \* \* \*

(ix) Offer WIC participants, parents or caretakers of infant or child participants, or proxies the same courtesies as other customers. If fees associated with online ordering (e.g., delivery, service, convenience, bag fees) are assessed to non-WIC customers using the same services, WIC participants must be allowed to pay them using another tender type;



\* \* \* \* \*

(x) \* \* \*

(2) \* \* \*

(iii) *Last date of use.* The last date on which the electronic benefit may be used to obtain authorized supplemental foods. This date must be a minimum of 30 days, or in the month of February 28 or 29 days, from the first date on which it may be used to obtain authorized supplemental foods except for the participant's first month of issuance when it may be the end of the month or cycle for which the electronic benefit is valid. This must be extended, as applicable, per paragraph (x)(4)(i) of this section; and

\* \* \* \* \*

(4) *Return of benefits.* If applicable, the State agency must allow for the return of electronic benefits to a participant's balance when items in an online order are not fulfilled. The return of electronic benefits and subsequent purchase must be linked to one or more items in the original transaction and must comply with the following requirements:

(i) *Return of benefits after the last date of use.* When electronic benefits are returned to a participant's balance, the State agency must provide the participant with no less than 7 calendar days to transact the returned benefits.

(ii) [Reserved]

\* \* \* \* \*

(bb) \* \* \*

(2) The State agency must develop policies to ensure that each transaction is authenticated according to standards established by FNS.

\* \* \* \* \*

7. In § 246.14, revise paragraphs (b)(1)(i) and (c)(4) to read as follows:

**§ 246.14 Program costs.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Purchasing supplemental foods in a retail food delivery system using WIC benefits and/or acquiring supplemental foods provided to State or local agencies or participants, whichever receives the supplemental foods first in a home food delivery system or a direct distribution food delivery system;

\* \* \* \* \*

(c) \* \* \*

(4) The cost of administering the food delivery system, including the cost of transporting supplemental foods, except as prohibited at § 246.12(h)(3)(xxxiii) and (v)(1)(ix).

\* \* \* \* \*

Cynthia Long,  
Administrator,  
Food and Nutrition Service.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix A--Regulatory Impact Analysis**

**Statement of Need**

The methods consumers, including those served by the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), use to purchase food have changed in response to advances in technology as well as changes in purchasing behavior brought on by the COVID-19 pandemic. The Department's regulations have not been changed to reflect these increased options available to consumers. To ensure that WIC participants have equal access to available shopping options, with the expansion of online shopping in

the retail grocery industry and the development of new payment types, the Department proposes to remove barriers its current regulations impose on online shopping and to modernize certain food delivery regulations in the WIC Program through this rulemaking. The proposed measures would complement the Program's near-complete transition to electronic benefit transfer (EBT) and aim to meet the needs of a modern, data-driven program that uses current technologies for food delivery. These changes are expected to improve nutrition security among WIC participants by increasing equity and access to available shopping options.

## **Background**

### **Introduction of Key Terms**

For the purposes of this proposed rule and analysis, the Department will use the following definitions:

- “WIC shopper” means a person shopping using WIC benefits (i.e., a WIC participant, proxy, or a parent or caretaker of an infant or child participant).
- “Online shopping” means the general use of an online, internet-based ordering system, platform, or site. It can encompass online ordering with or without internet-based transactions (i.e., the transaction can occur via the internet, in store, curbside, or at the point of delivery).
- “Online ordering” means the process a customer (including a WIC shopper) uses to select food items for purchase via an internet-based ordering system, platform, or site.
- “Transaction” means the process by which a WIC shopper exchanges their WIC benefits for supplemental foods.
- “Internet-based transaction” means a transaction where the WIC payment is completed through the payment section of the online ordering system, platform, or site. This terminology is being used in lieu of “online transaction” to avoid confusion with transactions that occur using online EBT technology.
- “Redemption” means the process in which a vendor submits records of electronic benefits for redemption and the State agency (or its financial agent) makes payment to the vendor.

### **Overview of the WIC Program and Shopping Experience**

The WIC Program is administered by 89 WIC State agencies, including the 50 States, 33 Indian Tribal Organizations, the District of Columbia, and 5 U.S. Territories (American

Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands). WIC serves to safeguard the health of low-income pregnant, breastfeeding, and non-breastfeeding postpartum individuals, and infants and children up to age five who are found to be at nutritional risk. In 2019, WIC participants included nearly 43 percent of all infants in the United States,<sup>1</sup> and in fiscal year (FY) 2020, WIC served an average of 6.25 million participants.<sup>2</sup>

The Department provides Federal grants to WIC State agencies to provide supplemental foods, health care referrals, and nutrition education, including breastfeeding promotion and support, to WIC participants. WIC participants typically access supplemental foods through a retail food delivery system. In such systems, a WIC shopper goes to a WIC-authorized vendor (i.e., a retail store authorized by the State agency), selects foods available in their benefit balance, and uses an EBT card to purchase the items. In FY 2020, there were approximately 40,000 WIC-authorized vendors nationwide, and nearly 93 percent of WIC participants received WIC benefits via EBT.

Current WIC regulations were written for a paper-based benefit delivery system and restrain State agencies from making use of the opportunities that EBT provides, including remotely issuing electronic benefits and transacting those benefits online. Current regulations that require participants to pick up food benefits in person and transact food benefits in the presence of a cashier pose challenges to participants with special dietary needs, limited mobility or access to transportation, and/or those who live in remote or

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<sup>1</sup> U.S. Department of Agriculture, Food and Nutrition Service, “National- and State-Level Estimates of WIC Eligibility and WIC Program Reach in 2019: Final Report, Volume I,” pp. 65, by Kelsey Farson Gray et al. Project Officer Grant Lovellette, Alexandria, VA: February 2022. Available online at: <https://fns-prod.azureedge.net/sites/default/files/resource-files/WICEligibles2019-Volume1.pdf>.

<sup>2</sup> U.S. Department of Agriculture Food and Nutrition Service, “WIC Data Tables,” 2021. Available online at: <https://www.fns.usda.gov/pd/wic-program>.

rural communities. These requirements also present unique challenges during disasters or public health emergencies, such as the COVID-19 pandemic.

#### Key Information Used in the Development of this Proposed Rule and Analysis

The 2014 Farm Bill (Pub. L. 113-79) mandated that the Department conduct a pilot to assess the feasibility and implications of allowing retailers authorized under the Supplemental Nutrition Assistance Program (SNAP) to accept SNAP benefits for online transactions. The SNAP Online Purchasing Pilot initially launched in New York in April 2019, then expanded to Washington in January 2020, followed by Alabama, Oregon, and Iowa in March 2020, and Nebraska in April 2020. The onset of the COVID-19 pandemic spurred a rapid expansion of the pilot across 47 States and the District of Columbia by early 2021. While online shopping with SNAP benefits is now available in nearly all States, WIC shoppers do not yet have widespread access to online shopping due in part to barriers under current WIC regulations.

In September 2020, the Department awarded a grant to the Gretchen Swanson Center for Nutrition (GSCN) to develop a plan for implementing online shopping in WIC. With extensive stakeholder input, GSCN developed the Blueprint for WIC Online Ordering Projects (the “Blueprint”), which was published in June 2021.<sup>3</sup> As a part of the grant agreement, GSCN has since awarded sub-grants to State agency and vendor partners to fund four projects that will test WIC online shopping across seven geographic States and one Indian Tribal Organization (ITO).

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<sup>3</sup> Gretchen Swanson Center for Nutrition. “Blueprint for WIC Online Ordering Projects,” 2021. Available online at: <https://www.centerfornutrition.org/wic-online-ordering>.

The Consolidated Appropriations Act for Fiscal Year 2021 (Pub. L. 116-260) authorized the Department to establish the Task Force on Supplemental Foods Delivery (the “Task Force”). The Task Force was charged with assembling WIC stakeholders to independently “study measures to streamline the redemption of supplemental foods benefits that promote convenience, safety, and equitable access to supplemental foods, including infant formula.” The Task Force submitted its recommendation report to the Department on September 30, 2021. The Department was then required to report a plan to Congress on how the recommendations would be carried out as well as whether any legislative changes would be required.<sup>4</sup>

The proposed Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program rule is informed by WIC stakeholder input and recommendations in both the Blueprint and the final reports of the Task Force. The Department has also incorporated lessons learned from the SNAP Online Purchasing Pilot. The GSCN sub-grant projects will be evaluated over the next year to assess the start-up costs required by State agencies and vendors to operationalize WIC online shopping and the impact that online shopping has on key outcomes including WIC benefit redemption rates. The Department intends to review the findings from the GSCN projects and use updated data to inform future iterations of this initial impact analysis throughout the rulemaking process, especially on implementation costs and redemption rate impacts.

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<sup>4</sup> More information on the WIC Task Force on Supplemental Foods Delivery, including links to both the Departmental and Congressional reports, is available online at: <https://www.fns.usda.gov/wic/task-force-supplemental-foods-delivery>.

## **Summary of Provisions**

The proposed rule would update WIC regulations to remove current regulatory barriers to online ordering and transactions in WIC, streamline and modernize food and benefit delivery options for WIC participants, and introduce measures intended to meet the needs of a modern, data-driven program that uses current technologies for food delivery.

Specifically, the rule proposes the following changes:

- Remove barriers to online ordering and internet-based transactions.
  - Allow vendors and WIC shoppers to complete internet-based transactions and allow State agencies to explore and identify options to authenticate EBT transactions that are appropriate for the specific technologies they choose to adopt.
  - Allow State agencies to authorize new types of vendors to give WIC participants more shopping options by:
    - Creating definitions for “brick-and-mortar,” “internet,” and “mobile” vendors.
    - Removing language from the definition of “vendor” that currently only allows State agencies to authorize vendors with a “single, fixed location” (i.e., brick-and-mortar vendors).
  - Allow vendors to return benefits to a participant’s benefit balance when an item requested through an online order cannot be fulfilled.
  - Allow State agencies to develop virtual methods of oversight.
  - Permit WIC shoppers to pay for fees related to online shopping (e.g., delivery, service, convenience, bag fees) using a separate tender type if such fees are assessed to non-WIC customers using the same services.
- Streamline and modernize WIC food delivery.
  - Permit the remote issuance of electronic benefits to a participant’s benefit balance and clarify the definitions of “electronic benefits” and “cash-value benefit” as separate and distinct from paper food instruments.
  - Add “other electronic benefit access device or technology” to the definition of a “food instrument.”
  - Allow State agencies to develop and test new WIC food instrument types.
  - Streamline food delivery operations by recognizing that EBT data are a sufficient replacement for routine shelf price collection.
  - Extend vendor application and agreement periods from three to five years.
  - Allow State agencies using a home food delivery system (non-retail) to ship supplemental foods to a location designated by participants (e.g., Alaska Natives who do not have at-home mail service).
- Meet the needs of a modern, data-driven program.
  - Update reporting requirements for Federal oversight to align with the transition in reporting systems from The Integrity Profile (TIP) to the Food Delivery Portal (FDP).
  - Create two new WIC State agency staff positions to reflect staffing needs of a modern, innovative program.

## Summary of Impacts

- **Costs**

The Department estimates that the provisions under this proposed rule would collectively result in a total of \$404 million in costs and Federal transfers over 5 years from FY 2024 through FY 2028 (Table 1). This estimate includes increases in Federal Government WIC spending, increased net costs to WIC State agencies, and a savings for WIC retail vendors.

The Department estimates that allowing WIC online shopping will increase Federal WIC food spending, in the form of transfers, by a total of \$392 million over 5 years. This is driven by an understanding that shoppers typically pay higher prices for online groceries and an expectation that online shopping would moderately increase WIC benefit redemption by making the WIC shopping experience more convenient for some participants.

**Table 1: Summary of Estimable Impacts on Transfers and Costs, FY 2024-2028**

	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
<b>Federal Transfers</b>						
<i>Impact of online shopping on Federal WIC food spending</i>	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	<b>\$ 392.1</b>
<b>State Agency Costs</b>						
<i>Systems development and maintenance for online shopping</i>	\$ 1.1	\$ 7.5	\$ 6.0	\$ 7.1	\$ 5.1	<b>\$ 26.9</b>
<i>Changes to reporting and recordkeeping burden</i>	-\$ 9.7	-\$ 10.0	-\$ 10.3	-\$ 10.6	-\$ 10.9	<b>-\$ 51.5</b>
<i>New State agency staff positions</i>	\$ 5.9	\$ 11.9	\$ 11.9	\$ 12.3	\$ 12.7	<b>\$ 54.7</b>
<b>WIC Vendor Costs</b>						
<i>Changes to reporting burden</i>	-\$ 3.6	-\$ 3.6	-\$ 3.7	-\$ 3.8	-\$ 3.9	<b>-\$ 18.4</b>
<b>Total Estimated Impact</b>	<b>-\$ 0.6</b>	<b>\$ 49.4</b>	<b>\$ 83.0</b>	<b>\$ 127.0</b>	<b>\$ 145.0</b>	<b>\$ 403.8</b>



The Department estimates that the proposed rule would also result in around \$30 million in net WIC State agency costs from FY 2024 to FY 2028. State agency costs include nearly \$27 million in total 5-year expenses required to update State agency systems to enable online transaction of WIC electronic benefits and \$55 million in total 5-year costs for increased staffing expenses due to the proposed changes to State agency staffing requirements. State agency costs would be partially offset by a large reduction in State agency reporting burden and recordkeeping burden, which is estimated to result in a savings of \$52 million over 5 years and is largely attributable to the removal of shelf price collection requirements for EBT State agencies and the extension of vendor agreement and application periods. These State agency costs are considered allowable expenses for State agencies under their annually awarded Nutrition Services and Administration (NSA) grants. The Department expects that State agencies would be able to absorb the costs associated with implementing the provisions under this proposed rule with current NSA funds without any increase in the level of NSA grants.

Finally, the removal of shelf price collection requirements and the extension of vendor application and agreement periods are also expected to significantly reduce burden on WIC vendors. The Department estimates that the reductions in vendor reporting burden under the proposed rule would save WIC vendors \$18 million over 5 years.

- **Benefits**

The provisions under this proposed rule aim to modernize the ways that WIC participants can receive and transact their electronic benefits, creating opportunities to improve equity and accessibility in the Program as a result. An estimated 14 percent of the U.S.

population lives in low-income census tracts with limited access to food stores,<sup>5</sup> and 21 percent of WIC participants report using a means of transportation other than their own personal car to travel to a vendor to use their WIC benefits.<sup>6</sup> By comparison, 95 percent of higher income households (above 185 percent of the Federal poverty line) use their own vehicle to travel to a grocery store.<sup>7</sup> Once at the vendor, participants also report challenges shopping for WIC foods. Recent USDA survey data indicate that finding the right WIC-approved products in stores, WIC-approved products being out of stock, and feeling embarrassed shopping for WIC foods are some of the most cited challenges among WIC participants who report difficulties shopping for WIC supplemental foods.<sup>8</sup> Online shopping may alleviate some of these issues for WIC participants and has the potential to provide benefits during supply chain disruptions.

Enabling online shopping in WIC under this proposed rule is expected to reduce barriers to WIC services, ensure that WIC participants have an equitable shopping experience as the retail marketplace innovates, and increase participant purchases of supplemental foods. Online shopping may also expand participant choice in supplemental foods,

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<sup>5</sup> USDA Economic Research Service. "State-Level Estimates of Low Income and Low Access Populations." Last updated September 30, 2019. Available online at: <https://www.ers.usda.gov/data-products/food-access-research-atlas/state-level-estimates-of-low-income-and-low-access-populations/>.

<sup>6</sup> Magness, A., Williams, K. Gordon, E., Morrissey, N., Papa, F., Garza, A., Okyere, D., Nisar, H., Bajowski, F., & Singer, B. (2021). Third National Survey of WIC Participants: WIC Participant Satisfaction and Shopping Experience: Brief Report #6. Prepared by Capital Consulting Corporation and 2M Research Services. Contract No. AG-3198-K-15-0077. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Karen Castellanos-Brown. Available online at: <https://www.fns.usda.gov/wic/third-national-survey-wic-participants>.

<sup>7</sup> Ver Ploeg, Michele, Lisa Mancino, Jessica E. Todd, Dawn Marie Clay, and Benjamin Scharadin. Where Do Americans Usually Shop for Food and How Do They Travel To Get There? Initial Findings From the National Household Food Acquisition and Purchase Survey, EIB-138, U.S. Department of Agriculture, Economic Research Service, March 2015. Available online at: <https://www.ers.usda.gov/publications/pub-details/?pubid=79791>.

<sup>8</sup> Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

particularly for authorized supplemental food substitutions needed to meet certain dietary restrictions, that may not be readily available at the closest WIC-authorized grocery stores. These regulatory changes would ensure that WIC participants have the ability to transact benefits online as an increasing share of U.S. consumers prefer to shop for groceries online. The proposed rule would further make WIC more convenient and accessible by encouraging State agencies to remotely issue electronic benefits and mail EBT cards whenever possible, potentially reducing the number of clinic visits that WIC participants are required to make. The proposed rule also includes provisions that would streamline and modernize WIC food delivery by promoting innovation and ensuring that State agencies have enough qualified staff meet the needs of a modern, data-driven program. These provisions provide necessary measures to ensure that State agencies can deliver a more efficient and effective program for WIC participants.

### **Section-by-Section Analysis**

#### **A. Baseline for Cost Estimate**

##### *Baseline Federal Costs*

The total projected baseline Federal cost of WIC absent the proposed rule for FY 2024 through FY 2028 is shown in Table 2 below. At the Federal level, WIC expenditures are broadly split between grants to State agencies to fund food benefits (“food costs”) and NSA grants to fund all approved non-food expenses (“NSA costs”). WIC food costs are a function of the number of participants receiving each food package, the retail prices of supplemental foods, the quantity of WIC foods prescribed to each participant, and the percentage of WIC benefits used by participants to purchase the supplemental foods that WIC-authorized vendors have submitted for reimbursement from the State agency (known as the “redemption rate”).

**Table 2: Projected Baseline Federal WIC Spending, FY 2024-2028**

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	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
<b>Total Food Costs</b>	\$ 3,434.9	\$ 3,595.9	\$ 3,766.8	\$ 3,948.1	\$ 4,140.6	\$ 18,886.4
<b>Total Nutrition Services &amp; Administration Costs</b>	\$ 2,157.6	\$ 2,224.5	\$ 2,293.4	\$ 2,364.5	\$ 2,437.8	\$ 11,477.8
<b>Total Federal Spending</b>	\$ 5,592.5	\$ 5,820.4	\$ 6,060.2	\$ 6,312.6	\$ 6,578.4	\$ 30,364.1

Note: Totals may not sum due to rounding.

### *Participation*

This analysis bases WIC participation projections on participation changes observed during FY 2020 and FY 2021 (including when program flexibilities were implemented in response to the COVID-19 pandemic); specifically, a fixed level of participation among women and infants and annual increases in participation among children. Accordingly, growth in child participation is estimated at 2.08 percent annually between FY 2021 and FY 2023 and to rise to 4.82 percent annual growth between FY 2023 and FY 2026 before leveling off at the higher participation level in FY 2027 and FY 2028. In 2019, the most recent data available, only 45 percent of eligible children participated in WIC. The share of eligible children that do not participate in WIC is considered the “coverage gap.”<sup>9</sup> The estimated increases in child participation used in this analysis reflect a projected narrowing of the coverage gap among WIC-eligible children as a result of current and future efforts to improve child retention in WIC. While declining birth rates in the U.S. have contributed to a decrease in women and infants enrolling in WIC since 2009, the Department projects participation of women and infants to level off due to future outreach efforts to increase participation among the eligible population.<sup>10</sup>

<sup>9</sup> Gray K., Balch-Crystal E., Giannarelli, L., and Johnson, P. (2022). National- and State-Level Estimates of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Eligibility and WIC Program Reach in 2019. Prepared by Insight Policy Research, Contract No AG-3198-D-16-0095. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Grant Lovellette. Available online at: [www.fns.usda.gov/research-analysis](http://www.fns.usda.gov/research-analysis).

<sup>10</sup> Although birthrates increased slightly (by about 1 percent) between 2020 and 2021, births continue to be below 2019 levels. Source: Martin JA, Hamilton BE, Osterman MJK. Births in the United States, 2021.

**Table 3. Baseline WIC Participation Projections, FY 2024-2028**

	Fiscal Year Participants				
	2024	2025	2026	2027	2028
<b>Women</b>	1,381,305	1,381,305	1,381,305	1,381,305	1,381,305
<b>Infants</b>	1,468,664	1,468,664	1,468,664	1,468,664	1,468,664
<b>Children</b>	3,714,820	3,894,002	4,081,826	4,081,826	4,081,826
<b>Total Participants</b>	<b>6,564,789</b>	<b>6,743,971</b>	<b>6,931,795</b>	<b>6,931,795</b>	<b>6,931,795</b>

Source: Internal USDA estimates.

- **Key Assumptions**

- Adoption of Online Ordering*

While the proposed rule would remove barriers to allow for online shopping in WIC, it would not require State agencies to implement online shopping. However, due to widespread interest in improving the WIC shopping experience, particularly through online shopping, this analysis assumes that by FY 2027, all 89 State agencies will have implemented WIC online shopping for WIC participants. However, like the adoption of EBT, the analysis assumes that online shopping will gradually roll out across State agencies between FY 2024 and FY 2027, covering around half of WIC State agencies by FY 2025. State agencies may vary in the time it takes to implement online shopping systems for many reasons, including contracting requirements with technology partners, the need to coordinate changes with Management Information Systems (MIS), or resource allocation constraints due to other State agency priorities. The Department also recognizes that implementation of online shopping in WIC depends upon authorized vendors offering this service to WIC participants. Because the Department is unable to predict at this time which State agencies will be the earliest adopters of online shopping, the analysis also assumes an even distribution of WIC participants across these State agencies (i.e., the 51 percent of WIC State agencies offering online shopping in FY 2025 will also cover 51 percent of WIC participants).

	Fiscal Year				
	2024	2025	2026	2027	2028
<b>Number of State Agencies</b>	7	45	68	89	89
<b>(% of Total)</b>	(8%)	(51%)	(76%)	(100%)	(100%)

Notes: The 7 State agencies expected to offer online shopping in FY 2024 represent the 7 State agencies currently participating in the Gretchen Swanson Center for Nutrition WIC Online Purchasing Sub-grant Projects.

In addition to estimating the number of State agencies offering online shopping in WIC, this analysis must also estimate how many WIC participants will transact any benefits online and, among online WIC shoppers, what share of their benefits will be transacted online. A recent nationally representative poll conducted in July 2021 found that 23 percent of Americans reported ordering groceries online for pickup or delivery at least once a month.<sup>11</sup> Online grocery sales are estimated to have accounted for about 12 percent of total grocery sales in 2021, in terms of total revenue, with their market share expected to grow to around 19 percent by 2024 (a 53 percent increase).<sup>12</sup> By the end of FY 2021, just over 8 percent of SNAP households nationwide made at least one SNAP purchase online in a given month, and online redemptions accounted for just under 5 percent of the total dollar amount of SNAP redemptions between August and September 2021.<sup>13</sup> This analysis assumes that SNAP shoppers are a better proxy for WIC shoppers than the general population but also estimates that growth in online shopping among all shoppers will follow at least the same 53 percent total increase that Mercatus predicts for the general population between 2021 and 2024. Accordingly, by increasing the 8 percent of SNAP households redeeming benefits online in 2021 by 53 percent total between 2021 and 2024, the Department projects that among State agencies operating online shopping in WIC, 12 percent of WIC participants will transact at least some of their benefits online

<sup>11</sup> Brenan, M. "More in U.S. Grocery Shopping Online, Fewer Dining Out." *Gallup*, 10 August 2021. Available online at: <https://news.gallup.com/poll/353090/grocery-shopping-online-fewer-dining.aspx>.

<sup>12</sup> Mercatus. "eGrocery Transformed: Market projections and insight into online grocery's elevated future," 2021.

<sup>13</sup> Based on internal, unpublished data on monthly online SNAP redemptions in FY 2021.

in FY 2024. As online grocery shopping continues to gain popularity, the share of WIC participants shopping online is expected to increase each year between FY 2024 and FY 2028 within participating State agencies. The Mercatus report also projects around a 13 percent relative increase in the online grocery shopping market share between 2024 and 2025. The Department applies the same 13 percent year-to-year growth rate to project the growth of WIC online shopping between FY 2024 and FY 2028. Beginning in FY 2024, this 13 percent annual growth rate amounts to about a 2-percentage point increase each year in the share of WIC participants, within participating State agencies, using at least some of their WIC benefits online between FY 2024 and FY 2028 (see Table 5).

**Table 5. Estimated Use of WIC Online Shopping Where Available, FY 2024-2028**

	Fiscal Year				
	2024	2025	2026	2027	2028
<b>Percentage of WIC participants expected to transact at least some benefits online</b>	12%	14%	16%	18%	20%

Notes: Estimates for each year reflect the percentage of participants that will use WIC online shopping only in State agencies where it is available at that time.

Even among online WIC shoppers, it is reasonable to assume some level of variation in exactly what percentage of their WIC benefits are transacted online. Thus, this analysis assumes that the average online WIC shopper will transact about half of their benefits online in a given month. This is consistent with initial estimates of SNAP online shopping, based on the share of SNAP benefits redeemed compared to the share of SNAP households shopping online after adjusting for estimated variations in in-store and online retail prices (described later in this analysis).

- **Cost, Participant, Vendor, and State Agency Impacts**
  - ***Remove Barriers to Online Ordering and Internet-Based Transactions***
- Discussion:

While use of online grocery shopping has expanded in recent years, including among SNAP shoppers, WIC participants do not have widespread access to online shopping with WIC benefits due in part to barriers in current WIC regulations. Current regulations require that WIC transactions occur in the presence of a cashier, allowing WIC shoppers to either sign a paper food instrument or enter a Personal Identification Number (PIN) for an EBT transaction. While some States agencies, including one ITO, have recently adopted WIC online ordering, this in-person requirement has prevented the transaction of WIC benefits from occurring online. Current rules also typically require WIC vendors to have a single, fixed location and require most vendor oversight activities to occur through on-site visits to those locations. The Department proposes several changes under this rule to address these and other regulatory barriers to allow WIC shoppers and WIC-approved vendors to complete transactions online. Specifically, the proposed rule would:

- Allow vendors and WIC shoppers to complete internet-based transactions by removing the requirement that participants complete WIC transactions in the presence of a cashier. Associated new provisions would allow State agencies to explore and identify options to authenticate EBT transactions that are appropriate for the specific technologies they choose to adopt.
- Allow State agencies to authorize new types of vendors to give WIC participants more shopping options by:
  - Creating definitions for “brick-and-mortar,” “internet,” and “mobile” vendors to distinguish vendors operating solely online from stores with a single, fixed location. The definitions for “internet vendor” and “mobile vendor” are based on SNAP’s definitions of “internet retailer” and “house-to-house trade route,” respectively, to ensure that cross-program integrity efforts continue without interruption.
  - Removing language from the definition of “vendor” that currently only allows State agencies to authorize vendors with a “single, fixed location” (i.e., brick-and-mortar vendors).
- Allow vendors to return benefits to a participant’s benefit balance when an item requested through an online order cannot be fulfilled to ensure that WIC benefits are not lost in these situations.
- Allow State agencies to develop virtual methods of oversight to ensure their monitoring and investigative methods are appropriate for the types of vendors authorized (e.g., internet vendors) and current environmental circumstances (e.g., during a pandemic).
- Permit WIC shoppers to pay for fees associated with online shopping by clarifying that WIC-authorized vendors, farmers, and farmers’ markets must not charge the State agency for fees associated with online ordering (e.g., delivery, service, convenience, and bag fees). If such fees are assessed to non-WIC



customers using the same services, WIC participants must be allowed to pay them using another tender type. The Department is requesting comment on whether State agencies should have the option to pay for such fees with either (1) non-Federal funding at State agency discretion and/or (2) Federal funding in situations where it is deemed necessary to meet special needs (e.g., participant access or other needs as identified by the State agency).

Cost:

*Impact on Federal WIC food costs*

Over the 5 years between FY 2024 and FY 2028, the rollout of WIC online shopping under this proposed rule is expected to increase Federal WIC food costs by \$392 million in total. The effect of allowing online shopping in WIC on Federal food costs is a function of both the effect on total WIC redemptions and the effect on the prices of WIC foods. When estimating the impact of online shopping on WIC food costs under this proposed rule, the analysis collectively considers the effect of each provision required to operate a modern online retail system, including allowing electronic benefits to be returned to a participant's benefit balance when an online order cannot be fulfilled. Because these provisions all contribute to enabling online shopping, the Department does not provide separate estimates for each provision.

On average, WIC participants do not use all their WIC benefits each month. WIC benefit redemption rates vary by food category. For example, in 2020, the estimated redemption rate was 44 percent for whole wheat bread and whole grains and about 72 percent for fruits and vegetables purchased with the cash-value benefit (CVB).<sup>14</sup> WIC participants report various barriers to using WIC benefits that impact these redemption rates, both in terms of traveling to a WIC-authorized vendor and using their benefits once there.

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<sup>14</sup> Based on internal USDA data collected in March 2021 covering monthly WIC redemptions for all months in calendar year 2020.

One USDA study, which surveyed a representative sample of WIC participants from 12 State agencies, found that 90 percent of respondents reported experiencing at least one negative shopping experience while transacting their WIC benefits in stores.<sup>15</sup> Among those, around 77 percent reported they had selected the wrong item and were sent back at checkout to find the correct WIC item, around 72 percent found a WIC item to be out of stock or unavailable in the correct container size, and around 34 percent reported they had felt embarrassed while using WIC benefits in stores. Traveling to a WIC-authorized vendor also presents challenges to some participants. In the same study, when surveying former WIC participants from three State agencies, 15 percent of respondents reported that they lacked convenient access to a WIC-authorized vendor.

Based on the opportunities that online shopping presents to address many of the in-store barriers and challenges that WIC shoppers report, as described above, the Department estimates that participants who use any WIC benefits online will, on average, increase their overall benefit redemption by 10 percent (e.g., a participant who previously purchased \$30 worth of WIC benefits would purchase \$33 under this proposed rule), independent of price variations. This analysis estimates an overall increase to purchases, rather than food category level impacts, because sufficient data are not available to project whether some food items will be impacted by online shopping more than others.

In order to better understand and estimate the effect online shopping may have on redemption rates, the GSCN sub-grant projects will evaluate the impacts of WIC online

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<sup>15</sup> Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

shopping on redemption rates. The Department has provided a range of cost estimates at different levels of redemption in the Uncertainties section of this analysis. These estimates will be updated, as appropriate, in future cost analyses later in the rulemaking process once redemption data from the GSCN projects become available. The Department also invites public comment on how online shopping in WIC may affect redemption rates.

The Federal WIC food costs associated with the proposed rule are also expected to be impacted by differences in the retail prices of online groceries compared to in-store options. A recent analysis published by Information Resources, Inc. (IRI), a retail market research firm, estimates that in May 2021 online grocery shoppers paid about 13 percent higher per unit retail prices (i.e., before separate delivery or other convenience fees) for fresh foods online compared to similar in-store products.<sup>16</sup> While online and in-store price differences tend to vary by vendor, these higher prices often reflect the added convenience costs of assembling online orders and processing internet-based transactions, which many retailers include within the unit costs of food items rather than charging separately (unlike delivery fees, which are typically separate and cannot be paid for with WIC benefits). WIC benefits are redeemed on a per unit basis (e.g., one gallon of milk or one dozen eggs) rather than as a set dollar amount, with the exception of the CVB. WIC shoppers are not expected to be price sensitive when using WIC benefits, and thus higher prices are expected to directly increase the Federal cost of the WIC food package. For this analysis, the Department uses IRI's recent estimate to project that, on average, WIC

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<sup>16</sup> The term "fresh foods" in this context includes items classified by retailers as bakery, dairy, deli, fresh produce, fresh meat and seafood, and meat alternatives. Although some WIC approved foods fall outside of this definition (including infant formula), this analysis applies the estimated 13 percent increase in online prices as an average across all WIC food types due to a lack more detailed and available industry data on food specific variations. For information see: Information Resources, Inc. and 210 Analytics. "Grocery E-Commerce – Opportunity Remains," 2021. Available online at: <https://www.iriworldwide.com/IRI/media/Library/IRI-Ecommerce-Update-May-2021.pdf>.

food items purchased online will be about 13 percent more expensive than in-store prices. Although the CVB is transacted as a set dollar amount, rather than per food item like other WIC foods, the Department estimates the same 13 percent price increase for online CVB redemptions, on average.<sup>17</sup> Because WIC participants transact around 72 percent of their CVB in an average month, a 13 percent increase in food prices online may be reflected as an apparent increase in the CVB redemption rate, as participants would need to use 13 percent more of their CVB to purchase the same amount of fruits and vegetables that they would in brick-and-mortar vendors. The Department will continue to collect data on price differences as it becomes available. The Department presents a range of cost estimates based on different pricing variations in the Uncertainties section of this analysis.

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<sup>17</sup> Note that these estimates and the analysis are based on the average WIC shopper redeeming 72 percent of their CVB prior to the proposed rule. WIC shoppers that currently spend all or nearly all of their CVB may find that they cannot purchase the same quantity of fruits and vegetables online as they can afford in brick-and-mortar stores.

**Table 6: Projected Uptake of Online Shopping and Impact on Monthly Per Person Food Package Cost, FY 2024-2028**

	Fiscal Year				
	2024	2025	2026	2027	2028
Projected number of State agencies offering WIC online shopping	7	45	68	89	89
Percentage of participants making at least one WIC purchase online, within participating State agencies	12%	14%	16%	18%	20%
Average percentage of WIC benefits used online among online shoppers	50%	50%	50%	50%	50%
Expected increase in total redemptions among online WIC shoppers	10%	10%	10%	10%	10%
Expected increase in online retail food prices, compared to in-store	13%	13%	13%	13%	13%
Total WIC participation	6,564,789	6,743,971	6,931,795	6,931,795	6,931,795
Number of participants making at least one WIC purchase online	61,960	477,382	847,392	1,247,723	1,386,359
Baseline monthly per person WIC food cost <sup>a</sup>	\$43.60	\$44.43	\$45.28	\$47.46	\$49.78
Projected monthly WIC food cost among online shoppers <sup>a, b</sup>	\$51.08	\$52.05	\$53.05	\$55.60	\$58.32

Notes:

<sup>a</sup> Food cost inflation is estimated for FY 2024 through FY 2028 using the Office of Management and Budget's (OMB) food at home projections used in the most recent President's Budget request.

<sup>b</sup> The projected monthly food cost among online shoppers includes both in-store and online shopping with the assumption that half of benefits are transacted in-store and half online. The half of benefits transacted online are then increased by 13 percent to reflect the projected increase in prices for online food items.

The projected 10 percent increase in total redemptions among online shoppers and the estimated 13 percent increase in retail unit prices for online food items would collectively increase the expected monthly per person WIC food costs from a baseline of \$43.60 among exclusively in-store shoppers to \$51.08 among average online shoppers in FY 2024.<sup>18</sup> Table 6 summarizes the expected uptake of WIC online shopping among participants and provides annual estimates for monthly per person food package costs, adjusted for annual inflation.

<sup>18</sup> Estimated \$45.64 monthly per person food costs assumes an average online WIC shopper is using 50 percent of their transacted benefits online and 50 percent in-store.

The cost impact of online shopping will continue to increase as more WIC State agencies offer online shopping and as use among WIC shoppers in those State agencies increases. In FY 2024, online shopping is only expected to increase total Federal WIC food spending by about \$5.6 million because the Department estimates that just 12 percent of participants in seven State agencies will transact WIC benefits online. The annual cost is expected to rise to \$121.9 million in FY 2027 and \$142.0 million in FY 2028 when WIC online shopping is expected to be offered by all 89 State agencies and used by an increasing share of participants (see Table 7).

**Table 7: Estimated Impact of Online Shopping on Federal WIC Food Spending, FY 2024-2028**

	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
Total food costs, online shoppers	\$ 38.0	\$ 298.2	\$ 539.4	\$ 832.5	\$ 970.1	\$ 2,678.3
Total food costs, in-store shoppers	\$ 3,402.5	\$ 3,341.4	\$ 3,306.3	\$ 3,237.4	\$ 3,312.5	\$ 16,600.1
<b>Total food costs, all shoppers</b>	<b>\$ 3,440.5</b>	<b>\$ 3,639.6</b>	<b>\$ 3,845.7</b>	<b>\$ 4,070.0</b>	<b>\$ 4,282.6</b>	<b>\$ 19,278.4</b>
<i>Baseline food costs without online shopping</i>	<i>\$ 3,434.9</i>	<i>\$ 3,595.9</i>	<i>\$ 3,766.8</i>	<i>\$ 3,948.1</i>	<i>\$ 4,140.6</i>	<i>\$ 18,886.4</i>
<b>Increase in WIC food costs due to online shopping</b>	<b>\$ 5.6</b>	<b>\$ 43.7</b>	<b>\$ 79.0</b>	<b>\$ 121.9</b>	<b>\$ 142.0</b>	<b>\$ 392.1</b>

Notes: All monetary estimates are adjusted for annual inflation.

#### *Online shopping system development and maintenance*

Spending associated with EBT system development and maintenance is estimated to increase WIC State agency costs by around \$27 million in total over 5 years between FY 2024 and FY 2028. Implementation of WIC online shopping would initially require new costs to State agencies associated with systems design, development, and testing of new processes for transacting WIC electronic benefits online. In addition to these initial costs, State agencies would incur new ongoing costs required to pay EBT processor fees

associated with monthly support and maintenance of EBT systems to allow for online transaction of benefits. The State agency costs detailed below assume the same implementation timeline presented previously in Table 6.

The Department expects that State agencies would be able to absorb these EBT processor costs using existing NSA funds. State agencies are generally allowed considerable flexibility in how they spend NSA funds. The estimates in Table 8 represent an initial assessment of projected costs. As mentioned above, the Department is testing these activities through the GSCN sub-grant projects and will collect information on actual costs incurred during the projects to better understand future implementation expenses. The Department also seeks public comment from State agencies, EBT processors, and WIC-authorized vendors on expected costs associated with these and any unforeseen, required system updates to help refine the estimates below.

The estimate of WIC State agency costs includes both initial costs and ongoing costs. To estimate initial costs, the Department has estimated EBT processor costs to design, develop, and test new technology solutions that would allow participants and vendors to transact WIC electronic benefits online. The Department estimates that the costs for EBT processors to design, develop, and test new online shopping solutions will be spread over 2 years and total \$2.20 million across all current EBT processors (see Table 8). The same small number of EBT processors contract with multiple State agencies.<sup>19</sup> Therefore, these initial costs to design, develop, and test new online shopping solutions are expected to be shared across multiple State agencies using common EBT processors. Initial costs would also include separate start-up costs paid to EBT processors each time a new State agency

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<sup>19</sup> See latest “WIC EBT Detail Status Report” for more information: <https://www.fns.usda.gov/wic/wic-ebt-activities>.

is added to an online shopping solution. The Department estimates that, once EBT processors have developed online shopping solutions, there will be an average one-time cost of \$90,000 (in FY 2022 dollars, adjusted annually for inflation) for each State agency to update its EBT system to implement online shopping (see Table 8). As new State agencies gradually implement online shopping solutions, the Department estimates \$8.26 million in start-up costs over 5 years for EBT updates to implement online shopping in 82 State agencies, in addition to the \$2.20 million estimate for design, development, and testing.<sup>20</sup>

**Table 8: Estimated EBT Processor Costs to Implement WIC Online Shopping, FY 2024-2028**

	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
<b>Initial Costs</b>						
Design, develop, and test new online shopping solutions	\$ 0.80	\$ 1.40	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2.20
Start-up cost to implement solution across all State agencies	\$ 0.00	\$ 3.74	\$ 2.33	\$ 2.19	\$ 0.00	\$ 8.26
<b>Ongoing Costs</b>						
Monthly support and maintenance costs	\$ 0.34	\$ 2.36	\$ 3.67	\$ 4.95	\$ 5.10	\$ 16.42
<b>Total:</b>	<b>\$ 1.14</b>	<b>\$ 7.50</b>	<b>\$ 6.00</b>	<b>\$ 7.14</b>	<b>\$ 5.10</b>	<b>\$ 26.88</b>

Notes: Monetary values are adjusted annually for inflation based on CPI-W wage projections consistent with the FY 23 President's Budget as costs primarily account for labor expenses for start-up and ongoing support.

New, ongoing operational costs are also expected for each State agency offering WIC online shopping. Once State agencies have implemented online shopping, the Department estimates an additional \$4,000 (in FY 2022 dollars, adjusted annually for inflation) in ongoing monthly EBT costs per State agency to address new support and system

<sup>20</sup> The estimate of \$8.26 million is based on a cost of \$90,000 each for 82 State agencies, adjusted annually for inflation. This assumes that these start-up costs would not be needed in the 7 State agencies that are developing internet-based transactions while participating in the Gretchen Swanson Center for Nutrition WIC online shopping sub-grant projects.



maintenance requirements. All projected costs represent estimated averages; however, actual costs may vary by State agency. In total, as all State agencies implement WIC online shopping systems, the Department estimates these ongoing monthly costs to add up to \$16.4 million in State agency spending over 5 years (see Table 8). The Department expects that the additional work required to adapt State agency policies and oversight methods and resolve participant concerns related to online shopping will be addressed by the WIC Food Delivery and WIC Customer Service coordinators. The estimated costs of these proposed State agency staff positions are discussed below.

#### Effect on WIC Participants:

This proposed rule is primarily intended to remove barriers that prevent WIC participants from accessing the benefits of online shopping. Enabling WIC participants to shop online is expected to increase participant access to WIC foods, address barriers and challenges participants report related to shopping for WIC foods, and broadly improve equity in the shopping experience.

Expanding access to WIC online shopping may increase participant access to WIC-authorized vendors. A 2018 USDA survey of three WIC State agencies found that, among former participants who had a negative shopping or vendor experience, 15 percent reported that they lacked convenient access to a WIC-approved vendor.<sup>21</sup> According to estimates from the USDA Economic Research Service (ERS), nearly 40 million people, or 14 percent of the U.S. population, lived in low-income and low-access (LILA) census

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<sup>21</sup> The survey did not define what participants meant by “convenient” so this could be inclusive of factors other than geography (e.g., hours of operation). Source: Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

tracts in 2015.<sup>22</sup> LILA measures define a low-access census tract as one where a significant number (at least 500 people) or share (at least 33 percent) of the population has limited access to a food store (supermarket, supercenter, or large grocery store), which is defined as living more than 1 mile from a food store in urban areas or more than 10 miles in rural areas. A recent study found that among the initial eight States participating in the SNAP Online Purchasing Pilot, online grocery delivery systems reached around 90 percent of LILA census tracts, though this varied substantially between urban and rural areas.<sup>23</sup>

As noted in the previous section, even WIC participants who are able to travel to WIC-authorized vendors report difficulties using their WIC benefits. Data discussed earlier from a recent USDA study indicate that a majority of WIC shoppers in the 12 State agencies covered by the study reported having difficulty locating WIC-approved foods in stores.<sup>24</sup> Another study, which collected qualitative data through focus groups and in-depth interviews of participants across four State agencies, found that difficulty identifying WIC-approved items as well as perceived stigma during checkout were the primary complaints participants reported about the WIC shopping experience.<sup>25</sup> Online shopping may address some of these barriers. For example, an online shopping system

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<sup>22</sup> USDA Economic Research Service. "State-Level Estimates of Low Income and Low Access Populations." Last updated September 30, 2019. Available online at: <https://www.ers.usda.gov/data-products/food-access-research-atlas/state-level-estimates-of-low-income-and-low-access-populations/>.

<sup>23</sup> Brandt EJ, Silvestri DM, Mande JR, Holland ML, et al. Availability of grocery delivery to food deserts in states participating in the online purchase pilot. *JAMA Netw Open*. 2019;2:e1916444.

<sup>24</sup> Gleason, S., Wroblewska, K., Trippe, C., Kline, N., Meyers Mathieu, K., Breck, A., Marr, J., Bellows, D. (2022). WIC Food Cost-Containment Practices Study. Prepared by Insight Policy Research, Contract No. AG-3198-C-15-0022. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Ruth Morgan. Available online at: <https://www.fns.usda.gov/wic/wic-food-cost-containment-practices-study>.

<sup>25</sup> Chauvenet C, De Marco M, Barnes C, Ammerman AS. WIC Recipients in the Retail Environment: A Qualitative Study Assessing Customer Experience and Satisfaction. *J Acad Nutr Diet*. 2019;119(3):416-424.e2. doi:10.1016/j.jand.2018.09.003.

could be designed to allow WIC shoppers to filter to only display items approved for WIC by their State agency or to only show the items available to them based on their WIC benefit balance.<sup>26</sup> Participants that find stigma to be a barrier to using their WIC benefits may also find more comfort and privacy in transacting benefits online. Finally, online shopping may also improve the shopping experience for WIC participants that report transportation challenges. Data from a nationally representative sample of WIC participants indicate that in 2019 around 21 percent of WIC participants used some means of transportation other than a personal car to travel to a vendor to transact their WIC benefits.<sup>27</sup> Individuals unable to drive themselves to a WIC-authorized vendor may prefer transacting WIC benefits online for delivery rather than transporting heavier items, such as milk and juice, by foot or on public transit. By addressing these barriers, this proposed rule is expected to increase benefit redemptions, as described in the previous section, and thus increase the amount of nutritious supplemental foods consumed by WIC participants.

Enabling WIC participants to use their benefits online is also expected to improve equity in access to online grocery shopping enabling WIC participants greater access to the convenience and potential time savings allowed by online grocery shopping. Data published in 2020 and 2021 by IRI indicate that low-income shoppers are less likely than middle- and high-income shoppers to purchase groceries online.<sup>28</sup> A recent systematic

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<sup>26</sup> Gretchen Swanson Center for Nutrition. “Blueprint for WIC Online Ordering Projects,” 2021. Available online at: <https://www.centerfornutrition.org/wic-online-ordering>.

<sup>27</sup> Magness, A., Williams, K. Gordon, E., Morrissey, N., Papa, F., Garza, A., Okyere, D., Nisar, H., Bajowski, F., & Singer, B. (2021). Third National Survey of WIC Participants: WIC Participant Satisfaction and Shopping Experience: Brief Report #6. Prepared by Capital Consulting Corporation and 2M Research Services. Contract No. AG-3198-K-15-0077. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Karen Castellanos-Brown. Available online at: <https://www.fns.usda.gov/research-and-analysis>.

<sup>28</sup> Information Resources, Inc. “Winning in CPG e-Commerce: Part 4,” March 26, 2021. Available online at: <https://www.iriworldwide.com/IRI/media/Library/IRI-TL-Demand-Pockets-Part-4-CPG-E-Commerce-03-29-21.pdf>.

review of online grocery shopping among low-income populations found that price and the inability to use nutrition assistance benefits like SNAP and WIC are barriers to equitable access to online grocery services.<sup>29</sup> While this gap is likely to narrow as the SNAP Online Purchasing Pilot continues to expand, this proposed rule would ensure that WIC participants will also be able to transact their WIC benefits online. Recent evidence also suggests that shoppers may make fewer unhealthy purchases when shopping online compared to in-stores specifically making fewer “impulse” purchases on items like sweets and candy.<sup>30, 31</sup> Therefore, expanding equitable access to online grocery shopping for WIC participants may have spillover effects into the rest of their grocery shopping if those shoppers move their non-WIC grocery shopping online as well.

#### Effect on Vendors:

The provisions included in the proposed rule are expected to increase opportunities for innovation in the retail grocery industry and may provide opportunities for increased revenue for vendors that offer online shopping for WIC participants using WIC benefits. For some WIC vendors, the opportunity to transact WIC electronic benefits online could expand their customer base by reaching WIC shoppers who had not previously shopped at the vendor’s brick-and-mortar locations. Other vendors may see an increase in revenue from existing WIC shoppers who prefer to use their online shopping platforms and increase their purchases of supplemental foods, as described in the previous section.

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<sup>29</sup> Trude, A., Lowery, C., Ali, S., Vedovato, G. An equity-oriented systematic review of online grocery shopping among low-income populations: implications for policy and research, *Nutrition Reviews*, 2022; nuab122, <https://doi.org/10.1093/nutrit/nuab122>.

<sup>30</sup> Harris-Lagoudakis, K. (2022). “ Online shopping and the healthfulness of grocery purchases.” *American Journal of Agricultural Economics* 104( 3): 1050– 1076. <https://doi.org/10.1111/ajae.12262>.

<sup>31</sup> Zatz, L. Y., Moran, A. J., Franckle, R. L., Block, J. P., Hou, T., Blue, D., Greene, J. C., Gortmaker, S., Bleich, S. N., Polacsek, M., Thorndike, A. N., & Rimm, E. B. (2021). Comparing Online and In-Store Grocery Purchases. *Journal of Nutrition Education and Behavior*, 53(6). <https://doi.org/10.1016/j.jneb.2021.03.001>.

However, the expansion of WIC online shopping is not expected to have the same impact on all vendors. The Distributive Impacts section of this analysis includes further discussion around potential disparate impacts for certain types of vendors.

The overall national increase in online grocery shopping is expected to impact the number and types of jobs employed in the retail food industry. Specifically, one group of university researchers estimates a shift towards fewer cashier positions and an increase in jobs associated with assembling, fulfilling, and delivering online grocery orders.<sup>32</sup>

Because WIC redemptions accounted for only about 0.6 percent of total U.S. food at home expenditures in 2019, the Department does not expect this proposed rule to have a significant impact on the food retail employment landscape beyond what is already projected in the market as a whole.<sup>33</sup>

Under the proposed rule, providing online shopping to WIC participants would be optional to vendors, and therefore the Department only expects vendors to participate in WIC online shopping if the vendor believes it to be in their best interest. Aside from the benefits described above, there may also be some upfront development costs for vendors who choose to update their online grocery platforms to be compatible with transacting WIC benefits online. The Department does not have the necessary data to provide even approximate estimates of these costs. To the extent possible, the Department intends to use development cost data collected in the GSCN sub-grant projects described above to better understand potential costs to vendors. The Department also recognizes that recent

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<sup>32</sup> Benner, C., Mason, S., Carré, F., and Tilly, C. Delivering Insecurity: E-commerce and the Future of Work in Food Retail. Berkeley: UC Berkeley Labor Center and Working Partnerships USA. 2020. <https://laborcenter.berkeley.edu/delivering-insecurity/>.

<sup>33</sup> Based the sum of WIC food costs and rebates issued in FY 2019 (<https://www.fns.usda.gov/pd/wic-program>) as a share of USDA ERS Food at Home expenditures, nominal dollars, in 2019 (<https://www.ers.usda.gov/data-products/food-expenditure-series/food-expenditure-series/#Current%20Food%20Expenditure%20Series>).

industry reporting suggests lower profit margins for grocery sales online compared to in-store and that vendors continue to explore ways to minimize the cost of fulfilling online orders to improve these margins.<sup>34</sup> So while improving equitable access to online shopping for WIC participants is expected to bring some WIC redemptions from in-store to online, because WIC redemptions account for such a small share of total U.S. food at home expenditures (as cited above) the Department does not expect this proposed rule to be meaningfully disruptive to the trajectory of e-commerce in the grocery industry as a whole.

#### Effect on State Agencies:

In addition to the State agency costs discussed above, the provisions in the proposed rule related to implementing online shopping in WIC are expected to create some additional, short-term actions as State agencies elect to participate. Initially, the rollout of online ordering systems is likely to require increased State agency staff time devoted to establishing contract changes with EBT processors, processing any necessary updates to State agency MIS data and systems, developing expertise in monitoring and oversight of internet-based transactions and vendors, and communicating the program changes to WIC participants. However, the Department does not expect these up-front efforts to be significant and they would be far outweighed by reductions in burden discussed later in this analysis. The additional staffing standards discussed later in this analysis would also help State agencies to adapt to online shopping.

Over time, the provisions allowing for remote vendor oversight are expected to decrease staff burden and travel costs. The Department does not specifically track State agency

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<sup>34</sup> McKinsey. "Achieving profitable online grocery order fulfillment." May 18, 2022. Available online at: <https://www.mckinsey.com/industries/retail/our-insights/achieving-profitable-online-grocery-order-fulfillment>.

expenses associated with travel and on-site monitoring or investigative activities and cannot provide an estimate for the level of savings. Internal data from a survey of WIC State agencies that utilized the Vendor Preauthorization Visits waiver, authorized under the Families First Coronavirus Response Act of 2020 (FFCRA, Pub. L. 116-127), found that over half of State agencies reported saving staff time by using the waiver to conduct preauthorization visits remotely.<sup>35</sup>

- ***Streamline and Modernize WIC Food Delivery***  
Discussion:

Current WIC regulations were written within the context of a paper-based voucher environment (prior to the advent of EBT), that envisioned a WIC participant traveling to a WIC clinic to pick up a paper voucher and then traveling to a WIC vendor to use their paper voucher in person. In the past two decades, much has changed in terms of technology, security, innovation, and WIC participant preferences to make these paper-based voucher assumptions obsolete. The proposed rule complements the Program's near-complete transition to EBT by modernizing and streamlining WIC food delivery regulations to reflect recent technological innovations in electronic benefit issuance, transaction, and redemption, and food delivery options to promote further innovation; to decrease burden on WIC participants, WIC vendors, and State and local agencies; to increase WIC participant choice; to improve program equity; and to reduce stigma experienced by WIC participants, while maintaining the WIC Program's high standards of program services and program accountability.

Specifically, the proposed rule would:

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<sup>35</sup> Unpublished data collected in March 2021 to fulfill FFCRA waiver reporting requirements. For more information: <https://www.fns.usda.gov/programs/fns-disaster-assistance/fns-responds-covid-19/wic-covid-19-waivers>.

- Permit the remote issuance of electronic benefits to a participant's benefit balance (e.g., load electronic benefits on to an EBT card, or other access device or technology, without requiring the participant to travel to a clinic). To clarify how remote issuance applies to food instruments, cash-value vouchers, and electronic benefits, associated provisions would add definitions for "electronic benefits" and "cash-value benefit" that are separate and distinct from the paper food instruments.
- Add "other electronic benefit access device or technology" to the definition of "food instrument" to support innovation in benefit delivery methods and enable WIC State agencies to explore and adopt new technologies beyond the EBT card (e.g., mobile payment) while ensuring that key program integrity requirements apply to these new technologies.
- Allow State agencies to develop and test new WIC food instrument types by eliminating a provision that only allows one type of food instrument to be used within a State agency's jurisdiction at a time.
- Streamline food delivery operations by recognizing that EBT data are a sufficient replacement for routine shelf price collection and eliminating certain collection requirements.
- Extend vendor agreement periods to reduce the application burden on potential WIC vendors and State agencies. The revisions would extend the maximum vendor authorization period from three to five years, consistent with SNAP.
- Allow State agencies using a home food delivery system (non-retail) to ship supplemental foods to a location designated by participants to better serve participants in remote areas (e.g., Alaska Natives who do not have at-home mail service).

The benefits of these proposed revisions extend to WIC participants, State agencies, and WIC vendors. Remote issuance of electronic benefits would save some WIC participants time and money by decreasing the number of trips they must make to their local WIC clinic, which may prove particularly beneficial to those WIC participants who face transportation barriers. If WIC participants are able to purchase and consume more of their WIC foods, and/or if more WIC-eligible individuals are able to participate in WIC for longer periods of time, then more participants will receive the health benefits offered by consumption of the nutritious supplemental foods provided by the WIC Program.

Extending vendor application and agreement periods would decrease administrative burden on both WIC vendors and WIC State agencies. The other proposed provisions either decrease the burden on State agencies or promote innovation in the WIC benefit



delivery space while maintaining the Program's high standards for transaction authentication, program services and program accountability, and participant privacy.

Cost:

*Remote issuance of electronic benefits*

Remote electronic benefit issuance would decrease transportation, childcare, and/or other costs (e.g., loss of work hours) currently borne by WIC participants in the process of picking up their WIC food instruments in person at a WIC clinic. As explained in the burden adjustment estimates published with this proposed rule, the Department estimates that remotely issuing benefits would save WIC participants a combined 1,049,335 hours per year in time spent traveling to and waiting to receive WIC benefits in person.

Remote issuance of electronic benefits may slightly increase WIC participation by retaining some WIC participants who may have otherwise dropped off the Program due to transportation, or other access challenges, but would now be able to receive their benefits remotely and shop online. If WIC participation increases, there will be a related increase in Federal costs to provide these participants with their WIC benefits. However, the Department expects the participation impact of this particular provision to be relatively small, and any increase in participation solely attributable to this provision is extremely difficult to disentangle from the expected increase in WIC participation as a result of the \$390 million in additional WIC funding made available in the American Rescue Plan Act of 2021 (ARPA, Pub. L. 117-2) to carry out outreach, innovation, and program modernization efforts to increase participation and redemption of benefits.

Therefore, the Department does not provide a separate estimate of the cost of this provision as a result of increased participation, but the public will have the opportunity to

provide feedback on participation impacts due to remote issuance during the comment period. See below for additional discussion of participation impacts of this proposed rule.

### *Decrease in State Agency and Vendor Burden*

As explained in the annual burden adjustment estimates published with this proposed rule, the Department expects the proposed rule would substantially decrease reporting and recordkeeping burden hours on both WIC State agencies and WIC vendors. The Department estimates a net decrease in reporting burden hours to State agencies of approximately 159,354 hours per year, which is almost entirely attributable to the proposed provision to remove shelf price collection requirements for State agencies operating an EBT system. State agency recordkeeping burden is also expected to decrease by an estimated 5,074 hours per year, primarily as a result of the proposed extension of vendor application and agreement periods. Reductions in State agency reporting and recordkeeping burden are collectively expected to result in a 5-year savings to State agencies of \$51.5 million in administrative costs.<sup>36</sup> Removing shelf price collection requirements in State agencies with EBT systems and extending vendor application and agreement periods are expected to have a similar effect on WIC vendor burden. The Department estimates a net decrease in reporting burden hours to WIC vendors of 143,401 hours per year, resulting in a 5-year savings to WIC vendors of \$18.4 million in administrative costs.<sup>37</sup>

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<sup>36</sup> Cost savings associated with State agency burden hours are calculated using the hourly total compensation for all State and Local workers from the Bureau of Labor and Statistics (BLS) for FY 2021 and inflated according to the CPI-W increase in OMB's economic assumptions for the FY2023 President's Budget for years FY2024-FY2028 (<https://data.bls.gov/timeseries/CMU301000000000D>).

<sup>37</sup> Cost savings associated with vendor burden hours are calculated using the hourly total compensation for all retail workers from the Bureau of Labor and Statistics (BLS) for FY 2021 and inflated according to the CPI-W increase in OMB's economic assumptions for the FY2023 President's Budget for years FY2024-FY2028 (<https://data.bls.gov/timeseries/CMU2014120000000D>).

### Effect on WIC Participants:

The provisions in this proposed rule are expected to decrease the burden on WIC participants and would make participating in the Program more convenient. Remote issuance of electronic benefits would decrease the number of visits that participants must make to their WIC clinics, saving these participants time and money as described above. A recent USDA study found that among surveyed participants with children who left WIC before age 5, around 40 percent reported inconvenience as a reason for leaving WIC early.<sup>38</sup> In an unpublished USDA study, 52 percent of surveyed WIC clinic staff reported that “difficulty being physically present for appointments” was a reason that child participants leave the Program between ages 2 to 4.<sup>39</sup> Remote issuance of electronic benefits may result in a small number of child participants who might otherwise drop off of the Program as they age to remain on the Program for longer, enabling these participants to receive more supplemental foods and nutrition education.

The provisions that provide State agencies with additional flexibility in the exact type of food instruments used would allow State agencies to innovate with service delivery, enabling them to provide the best experience to WIC participants at the lowest cost as technological advancements and WIC participant preferences continue to evolve in future years.

### Effect on Vendors:

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<sup>38</sup> Borger, C., Zimmerman, T., Vericker, T., et al. (2022). WIC Infant and Toddler Feeding Practices Study-2: Fifth Year Report. Prepared by Westat, Contract No. AG-3198-K-15-0033 and AG-3198-K-15-0050. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Courtney Paolicelli. Available online at: <https://www.fns.usda.gov/resource/wic-infant-and-toddler-feeding-practices-study-2-itfps-2-fifth-year-report>.

<sup>39</sup> Unpublished data from a USDA survey of clinic-level WIC staff from a nationally representative sample of local agencies, collected in March 2020.

Extending vendor application and agreement periods would decrease the administrative burden on vendors to provide this information to State agencies. WIC vendor error is already very low (estimated at 0.30 percent of total WIC food outlays).<sup>40</sup> EBT technology allows State agencies to receive current data about vendor prices at least daily, eliminating the need for additional burdensome reporting. Removing the requirement to collect shelf prices would result in a substantial decrease in administrative costs to vendors, as noted above.

#### Effect on State Agencies:

The proposed revisions would streamline and modernize WIC food delivery regulations to reflect current EBT technologies and provide space for future innovation by State agencies. Adding “other electronic benefit access device or technology” to the definition of “food instrument” would enable WIC State agencies to explore and adopt new technologies beyond the EBT card (e.g., mobile payment) while ensuring that key program integrity requirements apply to these new technologies. This revision would allow State agencies to deliver WIC benefits in a secure, cost-effective, and convenient manner. Similarly, updating the uniform food delivery systems provision would provide State agencies the ability to test new food instrument types that align with innovations in the retail market, and to smoothly transition to new types of food instruments.

Removing the requirement to collect shelf prices, or obtain an exemption, for State agencies that use EBT would decrease their administrative burden while allowing them to continue to meet the requirements of the vendor authorization and cost containment provisions. Receiving price information via EBT transaction data serves as a substitute

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<sup>40</sup> See the 2021 Annual Improper Payment Dataset, available at [https://www.cfo.gov/payment-accuracy/FY2021%20Payment%20Accuracy%20Dataset\\_3\\_1\\_2022.xlsx](https://www.cfo.gov/payment-accuracy/FY2021%20Payment%20Accuracy%20Dataset_3_1_2022.xlsx) (accessed March 8, 2022).

for the burdensome practice of collecting shelf prices from WIC vendors. As discussed above, extending vendor application and agreement periods would also decrease burden on State agencies without sacrificing program accountability, as time periods for vendor monitoring, training, and investigations would remain unchanged.

- ***Meet the Needs of a Modern, Data-Driven Program***  
Discussion:

The Department proposes several provisions that are intended to meet the needs of a modern, data-driven program that uses current technologies for food delivery.

Specifically, the proposed rule would:

- Update reporting requirements for Federal oversight to align with the transition in reporting systems from TIP to FDP, which is now the system of record for WIC vendor management data.
- Create two new WIC State agency staff positions to reflect the staffing needs of a modern, innovative program. The revisions include staffing standards for WIC Food Delivery and WIC Customer Service coordinators. These proposed staff would be in addition to the minimum number of staff currently required by regulations. As State agencies move to adopt new technologies and modern food delivery methods, these provisions are necessary to ensure State agencies have staff capable of meeting those demands.

Under current rules, WIC State agencies are required to have at least one full-time or equivalent Program Specialist for each 10,000 participants above 1,500, but not more than eight Program Specialists, unless the State agency considers it necessary.

The proposed rule would require that, in addition to current requirements for Program Specialists, State agencies must create two new staff positions: a WIC Food Delivery Coordinator and a WIC Customer Service Coordinator, based on the below monthly participation thresholds. The Department proposes to develop stronger standards for the position of the WIC Food Delivery Coordinator to manage the State agency's food delivery system, which likely includes the management and oversight of WIC-authorized

vendors in a retail food delivery system, to ensure that WIC State agencies have the staff in place to make the data-driven decisions necessary for a modern, efficient WIC Program that uses current technologies for food delivery. The Department also proposes adding standards to create a WIC Customer Service Coordinator to support program improvements related to participant-facing activities, particularly those that involve emergent technologies and future innovations. These staffing requirements would vary depending on the State agency's participant caseload:

- State agencies with monthly participation above 7,000 would be required to employ one full-time or equivalent WIC Food Delivery Coordinator and one full-time or equivalent WIC Customer Service Coordinator.
- State agencies with monthly participation above 500, but less than 7,001, would be required to employ a half-time or equivalent WIC Food Delivery Coordinator (if the State agency manages its own vendor cost containment system) and a half-time or equivalent WIC Customer Service Coordinator.

Cost:

*New State agency staff positions*

The provisions creating new WIC State agency staff positions are expected to increase WIC State agency costs by a total of \$55 million during FY 2024 to FY 2028. Based on current State agency monthly participation and staffing estimates, the Department estimates that a total of 108 new staff positions would be created. As State agencies would have 18 months from publication of the final rule to implement these requirements, this estimate assumes a phased implementation where 50 percent of the positions are filled in FY 2024 and the remainder filled by FY 2025.

Currently there are 51 State agencies with more than 7,000 monthly participants, and each of these State agencies would be required to employ one full-time or equivalent WIC Food Delivery Coordinator and one full-time or equivalent WIC Customer Service Coordinator who meet the new staffing standards. However, the Department estimates that 13 State agencies already meet the proposed WIC Food Delivery Coordinator

requirements and that 3 State agencies already meet the proposed WIC Customer Service Coordinator requirements with current staff and will not need to make new hires to fill these full-time roles. Therefore, the proposed rule would result in 38 new full-time or equivalent WIC Food Delivery Coordinator positions and 48 new full-time or equivalent WIC Customer Service Coordinator positions.

There are 22 State agencies, including some ITOs and smaller State agencies, with monthly participation greater than 500 but not exceeding 7,000, and each of these State agencies would be required to employ a half-time or equivalent WIC Food Delivery Coordinator and a half-time or equivalent WIC Customer Service Coordinator, which is equivalent to 11 new full-time WIC

**Table 9: Estimated Cost of Creating Two New Staff Positions, FY 2024-2028**

	Fiscal Year					
	2024 <sup>a</sup>	2025	2026	2027	2028	Total
Hourly Total Compensation <sup>b</sup>	\$ 59.02	\$ 60.79	\$ 62.61	\$ 64.49	\$ 66.42	N/A
Total Annual Compensation <sup>c</sup>	\$ 104,283	\$ 107,412	\$ 110,634	\$ 113,953	\$ 117,372	N/A
Cost of 108 New State agency Staff Positions (Millions)	\$ 5.6	\$ 11.6	\$ 11.9	\$ 12.3	\$ 12.7	\$ 54.2
Cost of Hiring and Recruitment (Millions)	\$ 0.3	\$ 0.3	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.5
<b>Total New Staffing Costs (Millions)</b>	<b>\$ 5.9</b>	<b>\$ 11.9</b>	<b>\$ 11.9</b>	<b>\$ 12.3</b>	<b>\$ 12.7</b>	<b>\$ 54.7</b>

Notes:

Numbers may not sum due to rounding.

<sup>a</sup> Because the proposed staffing standards will not be required until 18 months after the final rule is published, estimates assume a phasing in effect with only 50 percent of positions filled in FY 2024 and increasing to 100 percent by FY 2025.

<sup>b</sup> The hourly total compensation for FY 2024-FY 2028 are calculated by taking the hourly total compensation for all State and Local workers from BLS for FY 2021 (<https://data.bls.gov/timeseries/CMU3010000000000D>) and inflating that hourly total compensation figure according to the CPI-W increase in OMB's economic assumptions for the FY 2023 President's Budget for years FY 2024-FY 2028.

<sup>c</sup> Total annual compensation for a full-time position is calculated by multiplying hourly compensation by 1,767 hours (OECD Labour Force Statistics, 2020 average annual hours actually worked per worker in United States, <https://stats.oecd.org/index.aspx?DataSetCode=ANHRS>). Total compensation includes holidays, vacation and sick leave, and the cost of taxes and benefits.

Food Delivery Coordinator positions (assuming each State agency manages its own vendor cost containment system) and 11 new WIC Customer Service Coordinator positions. The remaining 16 State agencies with monthly participation not exceeding 500 would not be required to create any new positions. See Table 9 for detailed costs for hourly compensation, full-time annual salary, and annual total costs.

In addition to the total cost of compensation associated with the new staffing requirements, State agencies are also expected to incur some costs routinely associated with recruiting and hiring new staff. The Society for Human Resource Management estimates that in 2022, organizations spent on average around \$4,700 in hiring and recruitment costs per hire.<sup>41</sup> Applying CPI-W inflation projects the Department estimates about \$5,000 in hiring and recruitment costs per hire for the new positions – amounting to around \$300,000 in total hiring and recruitment costs each year in FY 2024 and FY 2025 (assuming half of the 108 positions are filled in each of these years as described above).

#### Effect on WIC Participants:

The proposal to create two new WIC State agency staff positions would formalize both the staffing requirement and the expected education and experience levels needed for the WIC Customer Service Coordinator and the WIC Food Delivery Coordinator, enabling WIC State agencies to hire qualified staff to support a modern, participant-centered program.

The WIC Customer Service Coordinator specifically would play a key role in future State agency efforts to design and implement innovative strategies and participant-facing technologies to increase participation in the WIC Program and the redemption of WIC

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<sup>41</sup> Navarra, Katie. “The Real Costs of Recruitment.” *SHRM*, 12 Apr. 2022, [www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/the-real-costs-of-recruitment.aspx](https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/the-real-costs-of-recruitment.aspx).



benefits (see the below section on Participation Effects for more information on these efforts).

#### Effect on Vendors:

The proposed revisions to update State agency reporting requirements and to create two new WIC State agency staff positions would improve vendor management and oversight, which has grown in complexity over the past decade. Vendor management and oversight relies on data analysis and statistical assessments to ensure the State agency can operate the Program effectively and efficiently. While these changes are expected to improve State agency vendor management operations, the Department does not expect that these provisions would have a measurable impact on vendors themselves.

#### Effect on State Agencies:

These proposed provisions may initially increase burden on State agencies. First, the proposed revision to update reporting requirements for Federal oversight would streamline State agency reporting to FNS and ensure that State agencies report to FDP on all business entities authorized and monitored by WIC State agencies. This provision is meant to align WIC regulations with the information that State agencies are already required to report in the new FDP system. While the system is designed to be less burdensome for State agency reporting, some up-front work will be necessary to develop procedures to comply with the requirements of FDP.

Second, the proposal to create two new WIC State agency staff positions would require some State agencies to hire new staff with the qualifications outlined in the staffing standards, which some State agencies may find challenging. On the other hand, the provision may assist some State agencies already seeking support to increase staffing.

Despite potential up-front need of recruiting and filling these positions, the Department expects these new roles to be instrumental in supporting State agency efforts to oversee an increasingly modern and complex WIC Program. The Department is specifically requesting comments on whether the proposed staffing standards would support State agencies' search for qualified personnel, including a discussion of the State agency's ability to recruit and fill these positions as described (considering both the recruitment and hiring of staff with the proposed credentials), an assessment of any challenges and costs associated with the adoption of these provisions, necessary timeline to operationalize such requirements, and any recommendations for changes to the standards along with related rationale.

- **Participation Impacts**

The baseline and revised costs presented in this analysis both assume a change in WIC participation from historical participation trends as a result of the \$390 million in additional WIC funding made available in ARPA to carry out outreach, innovation, and program modernization efforts to increase participation and redemption of benefits.

Implementation of projects made possible by this ARPA funding assume that participation will remain at current levels among infants and women, despite further declines in the birth rate, and an eventual increase in participation among children followed by a leveling off at the higher rate of child participation.

Given planned efforts to increase participation and retention under ARPA, as described above, the Department is uncertain at this time how much of an increase in participation may be attributable solely to the proposed rule.

- **Distributive Impacts**

Differences among vendors:

The largest retailers may be more likely than independent grocers or smaller stores to initially benefit from a shift to WIC online shopping. However, due to the recent sales growth of independent grocers and the relatively small share of small vendor revenue attributable to WIC, the Department does not expect the proposed rule to have a lasting or significant negative impact on these firms.

In 2020, the National Grocers Association reported that independent grocers accounted for 33 percent of total U.S. grocery sales, up from 25 percent in 2012.<sup>42</sup> This trend suggests a resilience among independent grocers to shifts in the retail landscape as many independent grocers utilized online shopping platforms when Americans turned to online grocery shopping in 2020 during the first year of the COVID-19 pandemic. However, data from IRI estimate that Walmart, Amazon, Instacart,<sup>43</sup> Target, and major grocery firms claimed over 82 percent of the grocery e-commerce market share in 2021, suggesting that the largest retailers and fulfillment platforms still likely hold a larger stake in the online retail space than independent grocers do relative to their share in the total grocery market.<sup>44</sup> The Department does not routinely track data necessary to determine how WIC benefit redemptions vary by most vendor characteristics, including indicators for whether the store is a small business or independent grocer. USDA's ERS estimated, by merging WIC and SNAP redemption databases, that 76 percent of WIC retail redemptions occurred in larger stores (super stores, supermarkets, or large grocery

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<sup>42</sup> Redman, R., "Independent supermarkets drive one-third of U.S. grocery sales." *Supermarket News*, 15 June 2021. Available online at: <https://www.supermarketnews.com/retail-financial/independent-supermarkets-drive-one-third-us-grocery-sales>.

<sup>43</sup> Note that Instacart is an e-commerce platform and not generally a direct retailer, therefore IRI data for Instacart sales likely represents a mix of retailer sizes. Although much of Instacart's sales are through large chains, the platform also provides an opportunity for many independent grocers to participate in e-commerce without developing a platform themselves.

<sup>44</sup> Information Resources, Inc. "Winning in CPG e-Commerce: Part 4," March 26, 2021. Available online at: <https://www.iriworldwide.com/IRI/media/Library/IRI-TL-Demand-Pockets-Part-4-CPG-E-Commerce-03-29-21.pdf>.

stores) in FY 2012; however, the study's definition of supermarkets and large grocery stores is inclusive of many independent grocers.<sup>45</sup> The Department does not have data on the extent to which small businesses and independent grocers have implemented online shopping to date, but is aware of products on the market being employed by independent grocers to provide online ordering currently for WIC participants (with in-store or curbside transactions).

If smaller WIC vendors (such as convenience stores or small and medium grocery stores) do not adopt online shopping solutions, then they may see some of their WIC revenues lost to larger retailers that provide online shopping. According to ERS data, in FY 2012, small grocery stores, medium grocery stores, and convenience stores accounted for 2.9 percent, 3.5 percent, and 3.8 percent of WIC retail redemptions, respectively. As WIC sales make up a relatively small fraction of the total revenue of smaller stores, and especially convenience stores, the Department expects any lost revenue for smaller vendors that do not adopt an online shopping solution to be relatively minor. For example, the 3.8 percent of total WIC benefits transacted at convenience stores in FY 2012 amounts to about \$228 million. U.S. convenience stores reported an estimated \$193 billion in total in-store sales, not including fuel, in 2012, suggesting that WIC redemptions represented only about 0.12 percent of non-fuel sales for convenience stores that year.<sup>46</sup> As mentioned earlier, the Department also projects a relatively small portion

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<sup>45</sup> Tiehen, L. and Frazão, E. Where Do WIC Participants Redeem Their Food Benefits? An Analysis of WIC Food Dollar Redemption Patterns by Store Type, EIB-152, U.S. Department of Agriculture, Economic Research Service, April 2016. Available online at: [https://www.ers.usda.gov/webdocs/publications/44073/57246\\_eib152.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/44073/57246_eib152.pdf?v=0).

<sup>46</sup> Statista. "Sales of the convenience store industry in the United States from 2011 to 2020, by format" 27 January 2022. Available online at: <https://www.statista.com/statistics/308767/sales-of-the-us-convenience-store-industry-by-format/>.

of WIC transactions to move online even when fully implemented in FY 2027 and FY 2028.<sup>47</sup>

The Department will continue to collect more timely information to better understand the potential impacts of this proposed rule on independent grocers and smaller vendors. Specifically, the Department will examine lessons learned from the SNAP Online Purchasing Pilot and GSCN sub-grant projects and will consider recommendations related to small vendor challenges published in the Task Force's Recommendations Report.

Differences among State agencies:

The Department does not expect the proposed rule to have an uneven or disproportionate impact on certain WIC State agencies over others. Many of the provisions in the proposed rule are written as State agency options, which would allow State agencies to tailor their approach to innovation around the issuance and redemption of WIC benefits to best fit their circumstances. The proposed changes to staffing standards to add new positions for a WIC Food Delivery Coordinator and WIC Customer Service Coordinator have the potential to put more strain on smaller State agencies with fewer resources to dedicate towards staffing. However, the Department is attempting to alleviate this in part by tiering the proposed staffing standards to adjust new hiring requirements by WIC caseload. The Department is specifically requesting comments on whether the proposed staffing standards would support State agencies' search for qualified personnel, including a discussion of the State agency's ability to recruit and fill these positions as described

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<sup>47</sup> The Department projects that about 18 and 20 percent of WIC participants will transact any WIC electronic benefits online in FY 2027 and 2028, respectively. Among those transacting any WIC electronic benefits online, only about half of their redemptions are expected to be online those years. See Table 6 for more details.

(considering both the recruitment and hiring of staff with the proposed credentials), an assessment of any challenges and costs associated with the adoption of these provisions, necessary timeline to operationalize such requirements, and any recommendations for changes to the standards along with related rationale.

Differences among participant subgroups:

Early data from research conducted on the implementation of the SNAP Online Purchasing Pilot in eight States in 2019 suggest that many individuals living in rural LILA census tracts may fall outside the service area of online grocery delivery services.<sup>48</sup> Although the study found that delivery systems reached around 90 percent of LILA census tracts, as discussed earlier in this analysis, this varied substantially between urban and rural areas. Using data from the eight States, the researchers estimated that grocery delivery services were available in only 39 percent of rural LILA census tracts, compared to 94 percent of urban LILA census tracts. Although online grocery services may have expanded in rural communities since this data was collected, and particularly following the onset of the COVID-19 pandemic, these findings suggest that WIC online shopping may not reach all participants equally, especially at first.

Allowing State agencies to adopt online shopping in WIC would also be less useful for households without internet access. According to data from the 2019 American Community Survey (ACS), between 78 to 85 percent of Americans in metro areas and 70 to 79 percent of Americans in non-metro areas between ages 18 to 64 living below 199

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<sup>48</sup> Brandt EJ, Silvestri DM, Mande JR, Holland ML, et al. Availability of grocery delivery to food deserts in states participating in the online purchase pilot. *JAMA Netw Open*. 2019;2:e1916444.

percent of the Federal poverty line had access to internet at home.<sup>49</sup> This leaves a significant number of families out of reach from online shopping services.

- **Uncertainties**

Use of WIC Online Shopping:

The impact of the proposed rule provisions that enable online shopping in WIC will depend largely on how many participants transact any WIC electronic benefits online. In this impact analysis, the Department projects that, within State agencies offering online shopping, 12 percent of participants will transact benefits online in FY 2024, increasing gradually to reach 20 percent of participants in FY 2028. These estimates are largely based on the uptake of the SNAP Online Purchasing Pilot and project outward based on the predicted growth rate of online grocery shopping among the general population.

If usage is 5 percentage points higher, starting at 17 percent in FY 2024, and continues to increase by about 2 percentage points each year, then the total cost impact would be estimated to be \$504 million over 5 years. If usage is 5 percentage points lower, starting at 7 percent in FY 2024, and maintains a 2-percentage point increase each year, then the total cost impact would be estimated to be \$280 million over 5 years (see Table 10).

**Table 10: Projected Cost of Online Shopping at Different Usage Levels**

	Fiscal Year (millions)					
	2024	2025	2026	2027	2028	Total
<b>Higher (+ 5%):</b> Percentage of participants making at least one WIC purchase online, within participating State agencies	17%	19%	21%	23%	25%	
Increase in total WIC food costs due to online shopping	\$ 7.9	\$ 59.2	\$ 103.7	\$ 155.7	\$ 177.5	<b>\$ 504.0</b>
<b>Current:</b> Percentage of participants making at least one WIC purchase online, within participating State agencies	12%	14%	16%	18%	20%	

Source: USDA, FNS, Office of Policy and Evaluation. March 2021. Available online at: <https://aspe.hhs.gov/sites/default/files/2021-07/internet-access-among-low-income-2019.pdf>.

Increase in total WIC food costs due to online shopping	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	<b>\$ 392.1</b>
<b>Lower (-5%):</b> Percentage of participants making at least one WIC purchase online, within participating State agencies	7%	9%	11%	13%	15%	
Increase in total WIC food costs due to online shopping	\$ 3.2	\$ 28.1	\$ 54.3	\$ 88.0	\$ 106.5	<b>\$ 280.1</b>

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Notes: All monetary estimates are adjusted for annual inflation.

#### Impact of WIC Online Shopping on Redemption:

The overall cost impact of enabling online shopping in WIC will also depend on how much the added convenience leads to an increase in overall redemptions. As described above, the benefits of online shopping are expected to address some of the barriers and challenges that WIC participants report about the current shopping experience. This analysis expects about a 10 percent increase in WIC electronic benefit redemptions among participants that transact at least some WIC electronic benefits online. As shown in Table 11, a 5-percentage point variation in this effect is estimated to amount to around a \$120 million difference in the 5-year estimate for WIC food costs. If benefit redemptions do not increase at all under the proposed rule, then the Department still estimates nearly a \$149 million increase in Federal WIC food costs attributed solely to the expected 13 percent increase in online food prices described earlier in this analysis.



**Table 11: Projected Cost of Online Shopping at Different Redemption Levels**

	Fiscal Year (millions)					Total
	2024	2025	2026	2027	2028	
<b>Higher:</b> 15% Increase in Benefit Redemption for Online Shoppers	\$ 7.3	\$ 57.2	\$ 103.5	\$ 159.7	\$ 186.1	\$ 513.8
<b>Current:</b> 10% Increase in Benefit Redemption for Online Shoppers	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	\$ 392.1
<b>Lower:</b> 5% Increase in Benefit Redemption for Online Shoppers	\$ 3.8	\$ 30.1	\$ 54.5	\$ 84.0	\$ 97.9	\$ 270.3
<b>Zero:</b> 0% Increase in Benefit Redemption for Online Shoppers	\$ 2.1	\$ 16.5	\$ 29.9	\$ 46.2	\$ 53.8	\$ 148.6

Notes: All monetary estimates are adjusted for annual inflation.

#### Difference in Prices of Online WIC Foods:

The overall cost impact of enabling online shopping in WIC would also be affected by differences in the retail prices consumers pay online. As described earlier in this analysis, the Department uses current market estimates to project that WIC shoppers will pay an average of 13 percent higher retail prices for WIC foods when transacting benefits online. An increase or decrease in retail prices of 5 percentage points, relative to in-store prices, would amount to over a \$60 million impact on the overall Federal WIC food costs associated with this provision of the proposed rule over 5 years (see Table 12). If there is no difference between in-store and online retail prices of WIC foods, then the proposed rule is still expected to increase WIC food costs by around \$229 million over 5 years attributed solely to the projected 10 percent increase in redemptions for online WIC shoppers, as described earlier in this analysis.

**Table 12: Projected Cost of Online Shopping at Different Retail Price Variations**

	Fiscal Year (millions)					Total
	2024	2025	2026	2027	2028	
<b>Higher:</b> 18% Increase in Retail Prices for Online Shoppers	\$ 6.5	\$ 50.7	\$ 91.6	\$ 141.4	\$ 164.8	\$ 455.0
<b>Current:</b> 13% Increase in Retail Prices for Online Shoppers	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	\$ 392.1
<b>Lower:</b> 8% Increase in Retail Prices for Online Shoppers	\$ 4.7	\$ 36.7	\$ 66.3	\$ 102.3	\$ 119.2	\$ 329.2

<b>Zero:</b> 0% Increase in Retail Prices for Online Shoppers	\$ 3.2	\$ 25.5	\$ 46.0	\$ 71.1	\$ 82.8	\$ 228.6
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Notes: All monetary estimates are adjusted for annual inflation.

Number of State Agencies that Already Meet New Staffing Requirements:

The overall cost of creating new staff positions based on the provisions of this proposed rule depend on the Department's estimate for current State agency staffing capacity. However, it is difficult to estimate how many State agencies already fulfill the proposed requirements because the Department does not routinely track State agencies' staffing qualifications. If an additional 5 percent of larger State agencies (those with more than 7,000 monthly participants) already meet the new requirements respectively for each new staff position, and do not need to hire new staff, only 36 State agencies would be required to hire a full-time WIC Food Delivery Coordinator and 46 State agencies would be required to hire a full-time WIC Customer Service Coordinator. Under these conditions, the above estimate of \$55 million for creating 108 new staff positions during FY 2024 to FY 2028 would decrease to nearly \$53 million for creating 104 new staff positions (including both costs of total compensation and costs associated with hiring and recruitment). If an additional 5 percent of larger State agencies are required to hire new staff for each new staff position, then 41 State agencies would be required to hire a full-time WIC Food Delivery Coordinator and all 51 larger State agencies would be required to hire a full-time WIC Customer Service Coordinator. This increase in hiring would bring the 5-year cost estimate up to \$58 million for 114 new staff positions during FY 2024 through FY 2028 (including both costs of total compensation and costs associated with hiring and recruitment). See Table 13 for annual and total cost estimates based on the number of new staff positions required.

**Table 13: Estimated Cost of Creating Two New Staff Positions, FY 2024-2028, Variations**

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**Fiscal Year  
(Millions)**

	2024	2025	2026	2027	2028	Total
<b>Higher (+5% of State agencies):</b> 114 New State agency Staff Positions	\$ 6.2	\$ 12.5	\$ 12.6	\$ 13.0	\$ 13.4	\$ 57.7
<b>Current:</b> 108 New State agency Staff Positions	\$ 5.9	\$ 11.9	\$ 11.9	\$ 12.3	\$ 12.7	\$ 54.7
<b>Lower (-5% of State agencies):</b> 104 New State agency Staff Positions	\$ 5.7	\$ 11.4	\$ 11.5	\$ 11.9	\$ 12.2	\$ 52.7

Notes: All monetary estimates are adjusted for annual inflation. Staffing costs include both total cost of compensation and costs associated with recruitment and hiring in FY 2024 and FY 2025.

### Alternatives

#### State Agencies Pay for Delivery Fees

The Department is requesting public comment on whether State agencies should have the option to pay for fees associated with online shopping in a retail food delivery system with either (1) non-Federal funding at State agency discretion or (2) Federal funding in situations where it is deemed necessary to meet special needs (e.g., participant access or other needs as identified by the State agency). If State agencies were to pay for these fees for all WIC online grocery orders using Federal funds, then the cost of the proposed rule would increase. These additional costs would be a function of two related cost streams: (1) payments made to cover the cost of delivery fees, and (2) new costs associated with a projected increase in usage of online shopping as WIC participants would no longer face a barrier of out-of-pocket delivery fees for WIC orders. The cost impact of the increase in online shopping is expected to be the same whether State agencies pay for the delivery fees using Federal or non-Federal funds.

To analyze the cost impact of this policy alternative, this analysis focuses on fees associated with grocery delivery services from internet-based grocery retailers and, in this

model, assumes that all State agencies opt to pay for delivery fees for all WIC online shopping delivery orders. The Department averaged the typical delivery and service fees of six of the largest online grocery firms. After adjusting for annual inflation, the Department estimates that an average online grocery order in 2024 will be assessed \$9.59 in delivery and service fees, increasing to \$10.51, adjusting for inflation, in FY 2028.

The Department expects an increase in the use of online shopping in WIC if participants do not have to pay delivery fees. Based on data from a recent Mercatus report, the Department estimates that, when faced with delivery fees, 33 percent of WIC online shopping orders will be placed for home delivery while the remaining 67 percent will opt for in-store or curbside pickup.<sup>50</sup> While many shoppers prefer curbside pickup regardless of the fees associated with delivery, this analysis estimates the share of online WIC shoppers choosing home delivery will increase from 33 percent to 45 percent if State agencies pay for delivery fees on behalf of participants. Paying delivery fees on behalf of participants is also expected to attract more in-store only shoppers to purchase WIC foods online. While the Department expects about 12 percent of WIC participants to transact their food benefits online in FY 2024, this figure is expected to increase slightly to 14 percent if State agencies pay for delivery fees and continue to steadily increase to 22 percent in FY 2028 (up from the 20 percent projected in Table 6 of this analysis). As discussed previously, the Department expects the average online WIC shopper would transact about 50 percent of the WIC food benefits they use online and the other 50 percent in brick-and-mortar stores. Data from four States in 2012 indicate that the average WIC participant in those States made 3.2 WIC shopping trips each month to use

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<sup>50</sup> Mercatus. "eGrocery Transformed: Market projections and insight into online grocery's elevated future," 2021.

their WIC benefits.<sup>51</sup> National polling data suggest that individuals who buy groceries online do so less frequently than in-store shopping trips.<sup>52</sup> Accordingly, the Department estimates that the average online WIC shopper will make one online WIC order each month and that the average WIC household will order benefits for two WIC participants in a single order (e.g., formula for a partially breastfeeding infant and WIC-approved foods for their partially breastfeeding parent).<sup>53</sup>

Given these assumptions, the Department estimates that total delivery fees paid will amount to \$124 million between FY 2024 and FY 2028 (Table 14). The slight expected increase in online shopping if State agencies pay for delivery fees on behalf of participants is expected to result in a total 5-year increase of \$437 million in Federal WIC food costs, approximately \$45 million higher than the estimated \$392 million increase to food costs over 5 years attributed to the proposed rule as currently written (Table 7). Between the projected increase in food costs and the new costs incurred for delivery fees, the Department estimates that using Federal funds to pay delivery fees on behalf of participants would increase the cost of this proposed rule by around \$169 million over 5 years (Table 14). If State agencies use only non-Federal funds to pay for the delivery fees, then the increase to Federal transfers would only reflect the increase in food costs driven by the increased uptake in online shopping described above – increasing 5-year costs by about \$45 million.

**Table 14: Estimated Impact on Cost of Proposed Rule if State Agencies Pay Delivery Fees, FY 2024-2028**

	Fiscal Year (millions)					Total
	2024	2025	2026	2027	2028	

**Alternative:**

Projected increase in Federal food costs due to online shopping if State agencies pay delivery fees	\$ 149.9	\$ 149.9	\$ 149.9	\$ 149.9	\$ 149.9	\$ 749.5
Additional increase in Federal food costs due to increased uptake in online shopping	\$ 156.2	\$ 156.2	\$ 156.2	\$ 156.2	\$ 156.2	\$ 780.8
<b>Total</b>	<b>\$ 306.1</b>	<b>\$ 306.1</b>	<b>\$ 306.1</b>	<b>\$ 306.1</b>	<b>\$ 306.1</b>	<b>\$ 1,530.3</b>

<sup>51</sup> Phillips, D., Bell, L., Morgan, R., & Pooler, J. (2014). Transition to EBT in WIC: Review of impact and examination of participant redemption patterns: Final report. Retrieved from [https://altarum.org/sites/default/files/uploaded-publication-files/Altarum\\_Transition%20to%20WIC%20EBT\\_Final%20Report\\_041414.pdf](https://altarum.org/sites/default/files/uploaded-publication-files/Altarum_Transition%20to%20WIC%20EBT_Final%20Report_041414.pdf)

<sup>52</sup> Brennan, M. "More in U.S. Grocery Shopping Online, Fewer Dining Out." *Washington Post*, August 2, 2021. Available online at: <https://www.washingtonpost.com/news/technology/wp/2021/08/02/more-in-u-s-grocery-shopping-online-fewer-dining-out/>

<sup>53</sup> According to data reported by 80 State agencies in the Supplemental Data Set of the WIC Participant and Program Characteristics 2020 Final Report, the average WIC household includes around 2 individuals receiving WIC benefits.

Projected total cost of delivery fees (paid by State agencies)	\$ 1.9	\$ 14.5	\$ 25.8	\$ 38.4	\$ 43.3	\$ 123.9
<b>Current:</b>						
Projected increase in Federal food costs due to online shopping if participants pay delivery fees out-of-pocket (Current)	\$ 5.6	\$ 43.7	\$ 79.0	\$ 121.9	\$ 142.0	\$ 392.1
<b>Increase in cost of proposed rule if State agencies pay delivery fees with Federal funds</b>	<b>\$ 2.8</b>	<b>\$ 20.7</b>	<b>\$ 35.7</b>	<b>\$ 52.0</b>	<b>\$ 57.5</b>	<b>\$ 168.7</b>
Notes: All monetary estimates are adjusted for annual inflation.						

### Requiring all 89 State Agencies to Create Two New Full-Time Staff Positions

The Department proposes to adjust the staffing standards based on the caseload size of the State agency. As an alternative, the Department could have proposed to require all 89 State agencies to create two new full-time staffing positions. Under the alternative, the total number of new staff positions required would be 178, and the total estimated cost would be \$90 million (including both costs of total compensation and costs associated with hiring and recruitment). However, the Department ultimately decided to adjust the staffing requirements based on each State agency's participant caseload due to resource constraints and to avoid undue burden on smaller States, Territories, and ITOs. See the Table 15 for annual and total cost estimates if all State agencies were required to employ two new full-time staff.

**Table 15: Estimated Cost of All State Agencies Creating Two New Staff Positions, FY 2024-2028**

	Fiscal Year (Millions)					
	2024	2025	2026	2027	2028	Total
<b>Current:</b>						
108 New State agency Staff Positions	\$ 5.9	\$ 11.9	\$ 11.9	\$ 12.3	\$ 12.7	\$ 54.7
<b>Alternative:</b>						
178 New State agency Staff Positions (requiring all State agencies to hire new staff)	\$ 9.7	\$ 19.6	\$ 19.7	\$ 20.3	\$ 20.9	\$ 90.2

Notes: All monetary estimates are adjusted for annual inflation. Staffing costs include both total cost of compensation and costs associated with recruitment and hiring in FY 2024 and FY 2025.

### **Accounting Statement**

As required by OMB Circular A-4 (available at [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/circulars/A4/a-4.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf)), the Department has prepared an accounting statement summarizing the annualized estimates of benefits and costs associated with the provisions of this proposed rule.

The benefits of the proposed rule include decreasing burden on WIC participants, WIC vendors, and State agencies; encouraging innovation by State agencies; and allowing WIC participants to transact benefits in new and innovative ways.

The net costs or savings (i.e., negative costs) and transfers associated with provisions of the proposed rule are incurred by the Federal government, WIC State Agencies, and/or WIC vendors. These include the following, as described in the full regulatory impact analysis text:

- Costs for new staff positions

- Costs associated with updating State agency systems for online transactions
- Decreased administrative burden
- Increased WIC food spending

**Table 16: Undiscounted Cost and Transfer Stream**

	Fiscal Year (\$ millions)					
	2024	2025	2026	2027	2028	Total
Nominal Federal transfer stream	\$5.6	\$43.7	\$79.0	\$121.9	\$142.0	\$392.1
Nominal State Agency cost stream	-\$2.7	\$9.4	\$7.7	\$8.8	\$6.9	\$30.1
Nominal WIC Vendor cost stream	-\$3.5	-\$3.6	-\$3.7	-\$3.8	-\$3.8	-\$18.4

Applying 3 percent and 7 percent discount rates to these undiscounted streams gives present values (in 2022 dollars):

**Table 17: Discounted Cost and Transfer Streams**

	Fiscal Year (\$ millions, 2022 dollars)					
	2024	2025	2026	2027	2028	Total
Discounted Federal transfer stream						
3 percent	\$5.0	\$37.4	\$64.3	\$94.3	\$104.4	\$305.5
7 percent	\$4.7	\$33.5	\$55.4	\$78.3	\$83.5	\$255.3
Discounted State Agency cost stream						
3 percent	-\$2.4	\$7.9	\$6.1	\$6.6	\$4.8	\$23.0
7 percent	-\$2.2	\$7.0	\$5.2	\$5.5	\$3.9	\$19.4
Discounted WIC Vendor cost stream						
3 percent	-\$3.3	-\$3.3	-\$3.3	-\$3.2	-\$3.2	-\$16.3
7 percent	-\$3.1	-\$2.9	-\$2.8	-\$2.7	-\$2.6	-\$14.1

Table 18 takes the discounted streams from Table 17 and computes annualized values in FY 2022 dollars.

**Table 18: Accounting Statement**

Benefits	Range	Estimate	Year Dollar	Discount Rate	Period Covered
<u>Qualitative:</u> Improved shopping experience, increased flexibility and convenience, and decreased burden on WIC participants; increased flexibility for WIC State Agencies; and increased opportunity for innovation by WIC State Agencies and WIC vendors.					
State Agencies, WIC Vendors, and WIC Participants					



Annualized Monetized (\$millions/year)	n.a.	n.a.	n.a.	n.a.	FY2024-2028
Transfers	Range	Estimate	Year Dollar	Discount Rate	Period Covered
Federal Government					
Quantitative: Impact of online shopping on Federal transfers for WIC food spending.					
Annualized Monetized (\$millions/year)	n.a	\$51.1	2022	7%	FY2024-2028
		\$61.1	2022	3%	
Costs	Range	Estimate	Year Dollar	Discount Rate	Period Covered
State Agencies					
Quantitative: Net impact of online purchasing system and maintenance, increased staffing costs, and decreased administrative costs.					
Annualized Monetized (\$millions/year)	n.a	\$3.9	2022	7%	FY2024-2028
		\$4.6	2022	3%	
WIC Vendors (Negative Costs = Savings)					
Quantitative: Impact of decreased administrative costs.					
Annualized Monetized (\$millions/year)	n.a	-\$2.8	2022	7%	FY2024-2028
		-\$3.3	2022	3%	

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